

STATE OF CALIFORNIA
 AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

DAIRY FRESH PRODUCTS COMPANY,

Employer,

and

UNITED FARM WORKERS OF AMERICA,
 AFL-CIO,

Petitioner.

No. 75-RC-16-R

3 ALRB No. 70

On September 23, 1975, an election was conducted at Dairy Fresh Products Co. Since the challenged ballots were sufficient to affect the outcome of the election, the regional director issued a report and the Board published an opinion, 2 ALRB No. 55 (1976), disposing of fifteen of the seventeen challenges. The amended tally showed the following results:

| | |
|-----------------------------|----|
| UFW | 33 |
| No Labor Organization . . . | 32 |
| Challenged Ballots. | 2 |
| Void Ballots | 1 |

Since the two remaining ballots were still determinative of the outcome of the election, a hearing was conducted on January 6 and 7, 1977. The hearing officer found that the two employees in question, Margaret Chavez and Manuel Moreno, were supervisors within the meaning of Labor Code Section 1140.4(j). The employer filed exceptions. We uphold the hearing officer's decision.

Manuel Moreno, who is no longer employed by the company, was listed as a mechanic although his duties were more varied. According to employer witnesses, Moreno received a salary and health and vacation benefits commensurate with those of an ordinary employee. However, Dairy Fresh employees, whose testimony was credited by the hearing officer, stated that Moreno distributed checks, issued warnings for tardiness and absences, adjusted time cards, heard complaints and promised to deal with them, awarded days off and suspended employees. One employee testified that Moreno had ordered her to work in the egg breaking room or punch out and go home. He also told her he could fire her. The company is in agreement with the fact that Moreno signed an employee's termination report in the space reserved for "supervisor's signature". At other times, he wrote the word "foreman" next to his name.

Margaret Chavez has been employed by Dairy Fresh for more than ten years in a variety of jobs. Management personnel testified that Chavez, like Moreno, received the non-management vacation plan, health plan, and salary. At the time of the election, Chavez' official job was that of quality control egg inspector, which involves locating the source of defective work by other employees. Chavez testified that she never corrected a problem resulting from an employee's work but merely reported difficulties to the supervisor on the floor. She also admittedly relayed messages from management to employees because of the special position she occupied in being bilingual. These factors alone would not necessarily cause her to be classified a supervisor. Dairy Fresh Products Company, 2 ALRB No. 55 (1976); Salinas Greenhouse Co.,

2 ALRB No. 21 (1976), However, the hearing officer credited the testimony of employees who stated that Chavez ordered them to do certain work, transferred employees from one job to another and threatened them with discharge if they did not comply. She also handed out checks and informed an employee as to the reasons for her discharge. An employee stated that Chavez ordered her to do a certain job; when she refused, Chavez returned with two supervisors who warned the employee she could do as she was told or punch out and go home.

Additionally, employees testified that Chavez verbally and physically abused workers. At a meeting in the summer of 1976,^{1/} employees and management personnel met to discuss complaints. A worker, Jose Gurrola, asked Dairy Fresh vice-president, Sylvester Feichtinger, through an interpreter, if Chavez had the right to hit, mistreat and suspend workers. According to Gurrola, Feichtinger answered that she did. Another worker asked in English whether Chavez had the right to hit people. She testified that Feichtinger made a yes-and-no answer with his hand.

Several witnesses, credited by the hearing officer, testified that both Moreno and Chavez were considered management by the other employees. See L. B. Foster Co., 168 NLRB 83 (1967). The employees asserted that after the election Moreno was asked if Chavez was a "majordoma" (boss) because she scolded and reprimanded workers. Moreno answered that she was a majordoma. Workers

^{1/} Since no one alleges any change in the status of Moreno and Chavez at Dairy Fresh after the election, it is appropriate to include post-election events to demonstrate and confirm continuing pre-election supervisor status.

stated that Chavez applied the label to herself as well and that they thought of her as such.

The employees' impression of Chavez' position with the company is only evidence and not an independent factor in finding supervisor status. However, when employees specifically asked, management either confirmed or failed to deny Chavez' authority, thus indicating its view of her as allied with management and effectively reinforcing her authority over its employees.

There is ample legal precedent to lead to the conclusion that the activities of Chavez and Moreno qualify them as supervisors. In NLRB v. Big Ben Department Stores, 396, F2d 78 (2nd Cir. 1968), the court held that an employee who had no authority to hire, fire, or discipline, or effectively recommend such action but had authority to transfer employees had thus exercised independent judgment and was a supervisor within the meaning of the Act. Both Margaret Chavez and Manuel Moreno had express or implied authority to transfer employees. In Benson Veneer Co., Inc., 398 F2d 998 (4th Cir. 1968), the court found an employee to be a supervisor, citing three factors: the employee earned more money than other men in his department, he transferred other workers between jobs in the department, and he reported to management on the quality of work of other employees. In Laminating Services, 167 NLRB 234 (1968), an employee was held to be a supervisor when he received substantially higher wages than other employees, distributed pay checks, relayed discharge messages, assigned work, had authority to validate time cards, and other employees reported their absences to him. Chavez and Moreno satisfied all the criteria above except

that they received only slightly higher wages than other employees. The statute defining supervisors reads:

The term 'supervisor' means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action (Emphasis added.)

The statute is worded in the disjunctive. Any one of the above factors can qualify an employee for supervisor status.

Even a person who spends most of his time in normal production or maintenance duties may be a supervisor if he exercises or is merely authorized to exercise any of the functions mentioned in the statutory definition . . . [Emphasis added, citations omitted.]. To be classed as a supervisor, a person need have only one or more of the types of authority mentioned, not all. (Citation omitted.) German, Robert. Basic Text on Labor Law, West Publishing Co., 1976.

Conclusion,

On our review of the record, we cannot say that the hearing officer erred in his findings or conclusions. On the contrary, the facts as he found them show clearly that Chavez and Moreno were supervisors. Accordingly, we sustain the challenges to their ballots.

Having resolved the challenged ballots in this matter, we will proceed to consider the employer's objections to the election.^{2/} Pursuant to the Board order of January 12,

////////////////////

////////////////////

^{2/} The employer's motion to reopen the hearing for the purpose of taking testimony from an additional witness is hereby denied. The witness was subpoenaed to the original objections hearing held on December 23, 1975, but failed to appear. At that hearing, the employer presented nine witnesses including voters and management personnel, whose testimony adequately covers the issues raised in its objections petition.

1976. post-hearing briefs on objections are due on September 6,
1977.

Dated: August 24, 1977

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

MEMBER JOHNSEN, Dissenting:

The majority has sustained the challenges to the ballots of Manuel Moreno and Margaret Chavez on the grounds that they are supervisors within the statutory definition of that term, and hence they are not employees entitled to the organizational privileges of the Act. I cannot agree with my colleagues that on the record or on the findings made by the hearing officer it must be held that the duties performed by these employees meet the requisite criteria for supervisory status. Accordingly, I would have directed the regional director to open and count the disputed ballots and issue a revised tally of ballots.

From the evidence presented in this case, I conclude that both Moreno's and Chavez' assigned tasks were routine and not supervisory in nature. Moreno's primary functions included supplying employees with an allotment of egg cartons as determined by shipping orders which he received daily from his immediate supervisor; date stamping packed cartons; correcting minor malfunctions in the processing machines; and calling in mechanics when more serious breakdowns occurred. He left Dairy Fresh's employ prior to the hearing and did not testify. Chavez, as a quality control inspector would randomly select eggs which had been readied for shipment to determine whether employees were processing a consistent product in conformity with grading standards. She also distributed payroll checks to plant employees because, according to the company bookkeeper,

Chavez knew all the people in the plant and "we didn't want them having to come to the office for this [purpose]". The record reveals that many of the employees who work with Chavez are not bilingual, whereas she is. According to her testimony as well as that of others, she was often requested by non-Spanish-speaking management personnel to explain to employees various matters affecting their work assignments, transfers, layoffs, termination, and the like.

Both Moreno and Chavez relayed information and orders from management to other employees and conversely relayed employee complaints to management as well as reporting inefficiencies and maintaining records. Even though an employee brings to management complaints against other employees as well as reports of inefficiency, he/she is not a supervisor if these reports are judged independently by management. Pepsi-Cola Bottling Co. of Merced-Modesto, 154 NLRB 490, 59 LRRM 1786 (1965).

In this regard, the majority notes that Moreno "issued warnings for tardiness and absences, heard complaints and promised to deal with them, awarded days off and suspended employees" [at p. 2]. However, there is insufficient evidence from which to conclude that he had authority to perform these tasks on his own initiative. The nature and extent of his actual authority becomes clear when juxtaposed against that of his own supervisor, Mr. Martinez. Martinez testified that although himself a supervisor, even he did not technically have the power to hire and fire employees; such decisions were made by plant manager Don Nabors who advised Martinez who then in turn instructed Moreno to carry the directive to the employee involved "because he [Martinez] did not like to do it".

Admittedly, Moreno and Chavez performed tasks at certain times which are customarily within the domain of employees categorized as supervisors. Such tasks, however, were sufficiently isolated to negate the inference that they were part of their regular course of work. Occasional performance of supervisory duties does not make an employee a supervisor within the meaning of the Act. NLRB v. Swift & Co., 240 F. 2d 65 (C.A. 9, 1957), 39 LRRM 2278 [Employees were not considered supervisors where, in addition to their regular duties, they instructed other employees in routine matters and took charge in their departments for brief periods when foremen were absent.]; NLRB v. Stewart Oil Co., 207 F. 2d 8 (C.A. 5, 1953), 32 LRRM 2651 [An employee is eligible to vote although he had temporarily substituted for one brief period for a supervisor.].

Case law authority cited with approval by the majority stands for the general proposition that any individual having the authority to exercise any of the duties enumerated in Labor Code Section 1140.4 (j) must derive that authority from management. See, in addition, West Penn Power Co. v. NLRB, 337 F. 2d 993 (C.A. 3, 1964), 57 LRRM 2387 [Whether an individual is a rank and file employee or a supervisor turns upon whether actual authority to exercise independent judgment has been expressly conferred by management.]. Therefore, whether an individual appears to possess "ostensible authority in the eyes of other employees" so as to cause other employees to regard him/her as the "boss" is immaterial to the Board's task in determining whether supervisory power in fact exists. Frank Foundries

Corp., 213 NLRB 391, 87 LRRM 1188 (1974).^{1/} In the initial opinion in this matter, see Dairy Fresh Products Co., 2 ALRB No. 55 (1976), at page 9, we said, with a degree of prescience, that:

In agriculture labor, given the cultural and language diversity that abounds between employer and employee 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. 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.

See, also, Salinas Greenhouse Co., 2 ALRB No. 21 (1976) [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.].

The foregoing cases are dispositive: "ostensible authority is not probative . . . [as the Board's] task is to determine whether a certain employee is actually a supervisor . . .", Frank's Foundries, supra.

In the majority's view, the matter before us is "controlled" by two decisions, Benson Veneer Co., Inc., 398 F. 2d 998 (C.A. 4, 1968), 68 LRRM 2692 and Laminating Services, 167 NLRB 234, 66 LRRM 1039 (1967). Both of these cases expressly, although in somewhat different phrasing/ confirm that the wage

^{1/}The Board reasoned that, "This is not an unfair labor practice proceeding where, in some circumstances, the conduct of a nonsupervisory employee may be attributable to the employer because of that employee's apparent authority to speak or act for management."

differential between the employees found to be supervisors and the remainder of the rank and file is a major factor for consideration, In Benson Veneer, supra, the court considered three factors in its determination. The first of these was that the supervisor received "substantially higher wages than the other men in his department". Similarly, in Laminating Services, supra, the first factor relied upon was that the employees whose status was in dispute were paid "50% higher than the next highest paid employee". In light of the fact that Manuel Moreno and Margaret Chavez received "non-management vacation plan, health plan, and salary"^{2/} I question the applicability of the aforementioned cases.

Additionally, both the hearing officer and the majority placed undue emphasis on testimony which alleged that Ms. Chavez verbally and physically abused workers. Simply stated, Ms. Chavez slapped another employee following a verbal confrontation which arose over a purely personal and nonwork-related matter involving several members of a family who were also employed at Dairy Fresh. My review of the record has convinced me that this matter, indirectly related to Ms. Chavez, spilled over into the job setting with such discord that a number of employees took sides. It was against this background and with encouragement from the UFW that six months after the election some employees petitioned for the meeting with management which the majority described.

^{2/}Prior to the election, Ms. Chavez had worked for Dairy Fresh for 10 years and received an hourly wage [she was required to punch a time clock] and a fringe benefit package including vacation time that was commensurate with that accorded all nonmanagement employees. Supervisory employees, on the other hand, are salaried and receive a more comprehensive health benefit package as well as a different vacation schedule.

Finally, it must be kept in mind that, "the Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the act is intended to protect". GAF Corporation v. NLRB, 524 F. 2d 492 (C.A. 5, 1975), 90 LRRM 3295. See also Senate Report No. 105, S. 1126, 80th Cong., 1st Sess. at p. 4 [Certain employees with minor supervisory duties have problems which justify their inclusion in the NLRA.].

I do not believe it has been established by a preponderance of the evidence that either Mr. Moreno or Ms. Chavez has "authority" to "reward", or to "adjust" the "grievances" of, their fellow employees, or effectively to recommend such action, within the intendment of those words in Labor Code Section 1140.4 (j). The record does not establish that either Moreno or Chavez was a supervisor. Accordingly, the challenges to their ballots should be overruled and a new tally of ballots issued.

Dated: August 24, 1977

RICHARD JOHNSEN, J R . , Member

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

DAIRY FRESH PRODUCTS, CO.,

Employer,

Case No. 75-RC-16-R

and

UNITED FARM WORKERS
OF AMERICA, AFL-CIO,

Petitioner.

Charles D. Field and Thomas S. Slovak,
Best, Best & Krieger, for Employer.

E. Michael Heumann II and Karen DeMott,
for the United Farm Workers of America,
AFL-CIO.

Mary Frances Gomez, Spanish Interpreter
for the Agricultural Labor Relations
Board.

DECISION

Statement of Case

JAMES E. FLYNN, Investigative Hearing Examiner: This case was heard before me in Hemet, California on January 6 and 7, 1977. On November 2, 1976, the Agricultural Labor Relations Board (Board) issued its decision in Dairy Fresh Products Co., 2 ALRB No. 55 (1976) on fifteen of seventeen challenged ballots cast in an election conducted among Dairy Fresh employees on September 25, 1975. The Board found that the Regional Director's Supplementary Challenged Ballot Report of February 3, 1976 was not dispositive as to the challenges to the ballots of Manuel Moreno and Margaret Chavez, and pending further investigation,

made no final disposition of the challenges. On November 19, 1976, the fifteen challenged ballots disposed of by the decision were opened and counted, and a revised tally of ballots issued. That tally showed the following results:

| | |
|-----------------------|----|
| UFW | 33 |
| No Labor Organization | 32 |
| Challenged Ballots | 2 |
| Void | 1 |

Because the remaining two unresolved challenged ballots could affect the outcome of the election, a Notice of Hearing on Challenged Ballots was issued on December 3, 1976. The question at issue in the hearing conducted before me pursuant to that notice was whether the challenges to the ballots of Moreno and Chavez should be sustained or overruled. Both employees were challenged by the United Farm Workers of America, AFL-CIO, (UFW) on the ground that they are supervisors within the meaning of Labor Code Section 1140.4 (j) .

All parties were given full opportunity to participate in the hearing. Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of all available evidence, I make the following findings of fact, conclusions, and recommendations.

Findings of Fact

I. The Operation of the Company

Dairy Fresh Products Company (Dairy Fresh) is a subsidiary of Cal-Maine Foods and shares offices in Los Angeles,

California with the parent company. Dairy Fresh owns and operates 12 facilities in Southern California, one of which is located in Winchester. That facility consists of a ranch which , houses chickens directly involved in egg production and the central plant for the Riverside-San Bernardino area. The representation election on September 25 , 1975 was conducted among employees at this facility.

When eggs are gathered from ranches connected with Dairy Fresh in the Riverside-San Bernardino area, they are trucked to the Winchester facility, processed, and then trucked to retail and wholesale markets. Eggs received for processing at Winchester are temporarily stored in a cool room after unloading until they are moved into the processing area. There they are sent to two separate processing machines where they are picked up by suction cups and placed on a conveyor. Once on the conveyor they are washed and then sent through an inspection room where they pass under a light before inspectors who remove damaged and cracked eggs or eggs with irregularities in an operation called candling. After this first inspection, eggs continue down a series of sizers which send the eggs to particular stations where they are placed into cartons at the packing heads. A percentage of packed egg cartons or flats are then checked by a quality control inspector to insure compliance with company and state standards and to detect and correct any problems in the processing operation. At the time of the election, Dairy Fresh ran two shifts a day in the processing plant. The day-shift hours were from approximately 7:00 a.m. to 3:30 p.m.

The night-shift hours were from approximately 4:30 p.m. to 12:30 a.m.

II. The Challenge to Manuel Moreno

A. Description of Work and Responsibilities

Company records list Moreno as a "mechanic," and he is grouped with other mechanics on Dairy Fresh payroll records for the week ending September 20, 1975.^{1/} Den Nabors, plant manager, and Andrew Martinez, night-shift supervisor at the time of the election, describe Moreno as a "floorman" or "leadman," although Martinez stated that this is not a technical job classification.

According to Martinez, he would give Moreno shipping orders and egg requirements for the day. Moreno would then take this list and make sure that each packer had the right cartons for his or her order and that additional cartons were supplied when needed. When eggs are packed, Moreno would date stamp the carton. Moreno would also make minor repairs and adjustments to the processing machines, but would call in mechanics if a serious breakdown occurred. On the night shift, Moreno's immediate superior was Martinez.

Moreno no longer works for the company. Counsel for Dairy Fresh stated that he was no longer in California, and Moreno did not testify at the hearing. While with Dairy Fresh, Moreno was paid \$2.80 to \$3.00 an hour and received vacation and health insurance benefits which Nabors testified were those provided

^{1/} Employer Exhibit No. 1.

non-management employees.^{2/}

B. The Discharge of Marina Rangel

Marina Cortes Rangel was employed by Dairy Fresh on the night shift in the processing plant at the time of the election. Shortly before the election, Rangel was late to work because she had taken her sick child to a doctor. Moreno warned her about being late.^{3/} A Cal-Maine Employee Warning Record for Marina C. Rangel, dated September 22, 1975, shows that she was reprimanded for being tardy and absent on September 19, 1975.^{4/}

On the reprimand, in the space for company remarks, are the words: "Has been missing work without calling in. Has been reporting to work late." Martinez testified that the remarks were in Moreno's handwriting. The warning record shows that this was the first written warning after two verbal ones. The reprimand is signed by Moreno above the words "Signature of person who prepared the warning" and by Martinez, above the words "Supervisor's signature." Martinez verified that the signatures were his and Moreno's. Rangel received a second written warning on October 14, 1975, for tardiness, absence from work, and disobedience violations which occurred the day before.^{5/} Martinez

^{2/} Coverage for medical payments was greater under the management plan. Salaried employees get three weeks vacation; hourly employees two, after five years with the company.

^{3/} In response to a subpoena by the UFW, Dairy Fresh provided 34 pages of records marked and admitted into evidence as UFW Exhibit No. 1. The subpoena was marked and admitted as ALRB Exhibit No. 1.

^{4/} UFW Exhibit No. 1, p. 8. Martinez testified that company warning records were called reprimands.

^{5/} UFW Exhibit No. 1, p. 7

testified that he wrote the following in the space for company remarks: "Employee has previously been warned about absentee. Also she has been told to call in/ in case of an emergency or other matters. She has been missing work and not calling in." Martinez signed the reprimand as supervisor, but Moreno again signed as the person who prepared the warning and also wrote the title "Foreman" next .to his name.^{6/}

On October 29-, 1975, Rangel received a third and final written warning for absence from work.^{7/} Under company remarks are the words "Has been missin (sic) to (sic) much work, very undependable," The writing is not similar to Moreno's and was not that of Martinez. Moreno signed the reprimand as the person who prepared the warning and again wrote the title "Foreman" next to his name. This warning is signed by Richard D. Wilson as supervisor.

Rangel was discharged on October 31, 1975 when Moreno brought her a check. A week before the layoff, Moreno told Rangel that it was time she left the job because they did not want responsibility for her. At the time, Rangel was pregnant. A company record entitled Employee Termination and Change of Address Report for Marina C. Rangel, dated October 31, 1975, gives the reason for her layoff as "Absent to (sic) many times." Testimony did not clearly identify the writing.^{8/} The termination

^{6/} Martinez testified that he never advised Moreno not to use the title of foreman in signing his name.

^{7/} UFW Exhibit No. 1, p. 6

^{8/} UFW Exhibit No. 1, p. 5

is signed by Moreno in the space marked "Supervisor's signature."^{9/} A similar termination for Rangel dated July 2, 1976, because of lack of work is signed by Robert "Hobie" Beman as supervisor.^{10/} Beman was assistant plant manager at the time.

Martinez testified that he asked Moreno to prepare these reprimands, but that Moreno had no authority to prepare them on his own. Martinez could not remember Moreno preparing other reprimands, but said Moreno did it when Martinez asked him to do so, but also when Martinez was occupied.

I do not credit Martinez' testimony that Moreno prepared reprimands on his orders only. Martinez contradicted himself when he stated Moreno could also prepare reprimands when Martinez was occupied. Rangel was reprimanded for being late. On some occasion when she punched in late, Rangel testified that she went to Moreno who would fix her time card by punching it, erasing, and then punching it again. Maria Rodriguez, who came to work at the Winchester plant in September of 1975, shortly after the election, stated that if she forgot to punch in, she went to Moreno who initialed the time card without checking with anyone. A third worker stated that when she arrived late, she had to give an explanation to Moreno.

According to Martinez, he reports to Nabors on hiring and firing and does not technically have the power on his own to fire. Martinez has not fired, but he has hired.^{11/} Nabors is

^{9/} Martinez testified that he never advised Moreno not to sign as a supervisor.

^{10/} UFW Exhibit No. 1, p. 1

^{11/} Martinez testified that while Moreno has not hired, he has come to Martinez and said that they were going to need someone "because one of my girls is going back to Mexico."

the one who makes the decision on layoffs,^{12/} but Martinez is the one who tells employees they are laid off because he is bilingual. Martinez often asked Moreno to tell employees they were laid off because he did not like to do it.

C. Responsibility for Directing Employees

According to Guadalupe Santiago Urias, an employee on the night shift at the time of the election, Moreno ran the inside of the packing plant, while Martinez usually worked outside on the loading docks because there were always a lot of eggs coming in and going out of the plant.^{13/} Martinez verified that he spent most of his workday on the docks at shipping and receiving overseeing egg shipments. According to Martinez, he would tell Moreno his shipping orders and requirements for the day and would then make rounds to make sure that the right eggs were being packed in the appropriate cartons and to check the washing operation. Martinez, however, testified that he rarely checked on persons working in the candling operation. The number of rounds depended on the length of the shift, varying from 8 to 12 times for a ten-hour shift.

Francisca Estrada said that she was working as a candler at the time of the election. According to her, if

^{12/} Nabors was not present in the plant on the night shift. There was no explanation by Martinez how he went to Nabors on hiring, firing, layoffs, and job transfers and assignments when Nabors was not in the plant on the night shift.

^{13/} Martinez stated that approximately 18 persons, including those working in shipping and receiving, were employed on the night shift at the time of the election.

anything went wrong, Moreno was the person to whom the candlers had to report. Another candler, Carmen Gurrola, testified that about two months after the election, Moreno asked her to move from candling to the egg breaking room, but she refused. Moreno told her that if she did not go, she could punch out and go home. Gurrola testified that she then asked whether Moreno could fire her and he responded that he could. There is no evidence that Gurrola did go to the egg breaking room. Marina Rangel testified that if she could not work in a particular job, she would tell Moreno and he would move her. Martinez himself stated that he received orders on job assignments from Nabors and then relayed these orders to Moreno who told the employees, but Martinez also testified that Moreno made recommendations on assignments to him which he followed 50% of the time. Martinez testified that Moreno came to him and said a worker was not doing the job the right way or was not doing the job he required. Martinez would then tell Moreno to confront the person and tell them to do a better job and do it the right way. Martinez did not know if Moreno went beyond his instructions. He could have said more than Martinez told him to say.

III. The Challenge to Margaret Chavez

A. Description of Work and Responsibilities

Chavez has been employed by Dairy Fresh for more than ten years in a variety of jobs. She started packing, candling, and running the processing machines, but at the time of the election she was a quality control egg inspector. This job consisted of checking a percentage of each shipment of eggs by

pulling a flat or carton off the line after it had gone through other processing operations. Chavez would then take the sample eggs to a booth equipped with a candling light, which was located near the processing machines, and inspect the eggs for cracks, called "checks"; blood; or other irregularities which would keep the eggs from meeting company or state standards. Once the eggs were inspected, Chavez recorded her findings on inspection reports and located the source of the problem.

Nabors stated that Chavez could, determine the source of a problem by the kind of defect she discovered. For example, he stated that there is a difference between old checks and fresh checks. If a check was old, Chavez would know that the check happened either on the ranch before being brought into the processing plant, or that it occurred in the plant during one of the early processing operations, but was missed by candlers in the initial inspection. If the check was fresh, Chavez would know that the problem was on the loader or in any of the five packing heads, and could isolate it to one particular packing head if necessary. Chavez stated that she never corrected a problem herself, but always reported to Nabors or the supervisor on the floor. When there were too many defective eggs, Chavez testified that she had to put down on her inspection reports the names of any person to whom she spoke about the problem.

Martinez testified that he was originally hired at Dairy Fresh to do quality control. Nabors stated that Martinez was hired because he had done egg inspection for the United

States Department of Agriculture at the time Dairy Fresh was processing eggs which had to meet strict federal standards at the Winchester plant. This work is no longer being done at the Winchester plant. Martinez testified that there is no one doing the work he did when he was in quality control, but the person whose job most closely resembles his is Margaret Chavez. When Martinez was in quality control, he supervised Margaret Chavez.^{14/}

Nabors testified that Chavez, like Moreno, received the non-management vacation and health benefits package. At the time of the election/ Chavez was paid \$2.75 per hour. On September 22, 1975, one day before the election, she received a \$.20 an hour raise from \$2.55 per hour. Packers and candlers earned between \$2.15 and \$2.30 per hour at the time of the election.

B. The Discharges of Juanita and Vicki Sandoval

Juanita Sandoval testified that she was laid off about two years before the election by Chavez. Jose Gurrola was present when Chavez gave Sandoval her check and told her that she was being laid off and someone else put in her place because all she could do was packing and candling.^{15/}

^{14/} Martinez at first testified that he was not a foreman when he was in charge of quality control, but later contradicted himself by stating that he supervised Chavez for six or seven months in 1973 when he was head of quality control.

^{15/} Gurrola also testified that he knew of four workers who had been laid off after being told by Chavez that they were not doing their jobs well. The workers were Juanita and Vicki Sandoval, Lupe Martinez, and another worker called Concha.

Prior to the layoff, Juanita Sandoval said Vince Cariveau had told her that if she did not want to make used boxes, she could go home. Cariveau appears on the Dairy Fresh payroll records for the week ending September 20, 1975 as a salaried employee and is grouped with plant manager Nabors.^{16/} On the day she was laid off, Chavez gave Sandoval her check and told her why she was being laid off. Sandoval did not talk to Cariveau.

Juanita Sandoval's mother-in-law, Esperanza Sandoval, testified that after Juanita was fired, she had a discussion with Nabors in his office about the reason she had been terminated. Another worker, Juan Flores, translated for Esperanza Sandoval at the meeting. According to Sandoval, she asked why Juanita had been fired. Nabors then asked Cariveau, who answered that Chavez, not he, had done the firing. In testimony Nabors could not recall either Juanita Sandoval's discharge or the conversation with Esperanza Sandoval, although he did not deny that they occurred. Chavez denied making a recommendation on the firing of Juanita Sandoval.

Vicki Sandoval was laid off on April 2, 1976. That day Sandoval and a group of workers were in the kitchen area of the Winchester plant in the morning before work began. According to

^{16/} Employer Exhibit No. 1, p. 1.

Kathy Rhodes, currently a bookkeeper with Dairy Fresh, worked with Juanita Sandoval at the time she was terminated as a packer (from August 1973 to August 1974). She stated that Sandoval was warned about being too slow and that Cariveau recommended the termination, although she did not know who signed the papers. Rhodes stated that she did not hear Cariveau warn Sandoval about her work, but she did hear him tell people in the office that she was going to be laid off because she was too slow.

Sandoval, one worker was voicing feelings about working at the Winchester plant, when Sandoval told her not to say anything more because it would get back to Chavez. Another employee, Maria Flores, then asked Sandoval if she were accusing her of running to Chavez. Flores then left and returned with Chavez. This was about 5 a.m., shortly after the machines had started up. Flores asked Chavez -to tell the workers that she did not report things to her. "Chavez cursed and yelled for the husband of one of the secretary's to get Sandoval out of there. More words were exchanged and then people quieted down and went to their work. About 6:30 a.m., Sandoval's sister, Susan Ramirez, told her that Chavez wanted to see her. When Sandoval got to Chavez' inspection station, which was located at the other end of the plant from where Sandoval was working, another argument occurred. During that argument, Chavez hit Sandoval. The two were separated by another employee. Sandoval then stated that five or ten minutes later she went to Nabors and told him that the plant would run better without Chavez and that she mistreated people. Nabors at this time told Sandoval that she was laid off because of lack of work. According to Nabors, he told Sandoval three days before that she would be laid off because there was a lack of work and because she was one of the younger workers, and that the layoff was not related to the dispute with Chavez.

Sometime after the election at the plant and the layoff of Vicki Sandoval, at least two meetings were held between a group of employees and management at the plant. One meeting was held in late summer, either August or September of 1976.

Management people present were: Sylvester Feichtinger, vice-president of Dairy Fresh, who was based in the Los Angeles offices of Gal-Maine Foods; Forrest Meares, ranch division manager of Dairy Fresh; Don Nabors, Winchester plant manager; Robert "Hobie" Beman, Winchester assistant plant manager; Gerard Smit, Winchester supervisor; Andrew Martinez, Winchester supervisor; an unidentified person who accompanied Feichtinger; and an unidentified woman who did quality control egg inspection when Chavez was gone. Margaret Chavez was present for part of the meeting. Employees present at the meeting were: Jose Gurrola, Carmen Gurrola, Vicki Sandoval, Esperanza Sandoval, Susan Ramirez and Lila Flores. Jose Gurrola, through Martinez who acted as interpreter, asked Feichtinger whether Chavez had the right to hit, mistreat, and suspend workers. According to Gurrola, Feichtinger answered that she did. Carmen Gurrola, Esperanza Sandoval, and Vicki Sandoval all testified with only minor differences that the conversation occurred. Vicki Sandoval testified that she then asked in English whether this gave her the right to hit people, and Feichtinger gave a yes-and-no answer with his hand.

Martinez admitted that there were two meetings in the summer of 1976 and that he translated at both, but he denied translating Gurrola's question and Feichtinger's answer and stated that there were no statements that Chavez could hit people. Nabors also recalled attending some meetings, two before the election and two after the election, but he was uncertain as to dates. He did say that he attended one meeting with Meares

and some workers seven or eight months before the hearing which was requested by the UFW. Nabors said that Feichtinger was present at some of the meetings, but at the one Nabors recalled, Chavez's job responsibilities were not discussed. According to Nabors, Feichtinger asked that certain workers and former workers be called to the meeting. Nabors remembered that Vicki Sandoval was one of those called, but he did not remember whether Gurrola was present. Both Nabors and Martinez described the meeting as being concerned with solving problems and friction between Chavez and the Gurrola families, and not with Chavez's job responsibilities. According to Chavez, she and the two families were on bad terms because of a dispute involving one of her relatives and a relative of the Gurrolas. On December 30, 1976 Jose Gurrola filed an unfair labor practice charge against Dairy Fresh, related to Chavez.

I do not credit the testimony of Martinez and Nabors on these discharges. While Martinez and Nabors admitted that there was a meeting between Feichtinger and certain workers last summer, neither could relate the substance of any statements made by anyone present, except by way of denying that the statements of Gurrola and Feichtinger were made. Their description of the meeting was only in the general terms of "solving problems, if any, with Chavez", as stated by Nabors, and "friction between the Gurrolas and Chavez", as stated by Martinez. Martinez further stated that the Gurrolas did not like Chavez because she was trying to "boss them around" and that Feichtinger was trying to get them together. On cross-examination,

Martinez admitted that the meeting related to a petition filed by Dairy Fresh employees, not only the Gurrolas, for transfer of Chavez to another Dairy Fresh plant because of worker complaints. On the other hand, all four employees who testified related substantially the same discussion between Gurrola and Feichtinger. They were able to name every person, both management and worker, present; the location of the meeting (the secretary's office where the coffee pot is); and the time of day (late afternoon). From Martinez's demeanor, when asked whether he translated anything like what others testified the discussion between Gurrola and Feichtinger, I do not believe his denial. Nabors was extremely nervous during this testimony, whereas during earlier testimony on other matters when called by the UFW, he was relatively composed. Chavez testified that she could not recall the discussion between Gurrola and Feichtinger, but she stated that she was not present until sometime after the meeting had begun. Testimony by several witnesses showed that the discussion between Gurrola and Feichtinger opened the meeting.

No evidence was introduced by Dairy Fresh to show that Chavez's work and responsibilities had changed when the incident with Vicki Sandoval and the meeting with Feichtinger occurred from what they were at the time of the election. Esperanza Sandoval testified that after the election she asked Moreno whether Chavez was a "majordoma" because she scolded and reprimanded other workers. Moreno answered that she was a majordoma. Sandoval and others at the hearing testified that "majordomo" or "majordoma"

was used to refer to persons who ordered other employees around. Persons who the workers regarded as majordomos or majordomas were Martinez, Barrett, Moreno and Chavez. Both Martinez and Barrett were unquestionably supervisors.^{17/} Sandoval also testified that after the election Chavez herself stated that she was a majordoma and that everything she did was fine with the people above her. Chavez denied ever calling herself or hearing herself called a majordoma.

C. Responsibility for Directing Employees

A number of witnesses testified that Margaret Chavez ordered them around and assigned them to move from job to job within the plant.^{18/} Chavez denied that she had the authority to or had ever directed workers or assigned them to work at various jobs. According to Chavez, she never did anything without consulting with superiors and merely carried their orders. I do not credit her testimony. Chavez admitted that when her inspection turned up too many defective eggs, she had to "track down" the problem. She then would tell those responsible what to do and write down who she spoke to in her inspection reports. Chavez admitted telling packers not to handle the eggs roughly because they would break. She also told candlers to watch their

17/ James Barrett was identified by Chavez as a foreman. She testified that while he was foreman she gave out payroll checks to other workers because he asked her because of her knowledge of workers and ability to speak Spanish. Chavez also stated that other persons who did the same job as Barrett were Randy Thompson and Manuel Moreno. Thompson was identified by Dairy Fresh as day shift supervisor at the time of the election.

18/ Carmen Gurrola testified that Chavez told her to move from candling to egg breaking and that when she refused, Chavez returned with Nabors who ordered her to do what she was told or punch out.

"checks" more closely and foremen to tell machine operators not to let eggs pile up and break. Chavez was responsible for the work product of other employees. She made the final inspection of eggs, which Nabors stated was an extremely, important function because of the possibility of fines or citations if eggs failed to meet state standards. Where Chavez did not directly order workers about, her inspection findings and reports went directly to foremen or Nabors and operated as effective recommendations. Given the importance of the work and her experience, these were in practice tantamount to orders.

D. Management Meetings

Chavez attended two meetings with Nabors, Beman, and Martinez, one before the election and one after, put on by the Proudfoot Company. According to Chavez, the company had been hired by Dairy Fresh to do a time study management survey to show them how to cut down on the number of employees so that the same number could do the work. Chavez admitted that she has on occasion gone to Nabors and told him that they were short of workers, but contended that he would always tell her what to do in those cases.

In May of 1976, Chavez attended a meeting in Anaheim with Nabors, Beman, and Jan DePaola on profit sharing. Dairy Fresh has a profit sharing program for which all employees are eligible after one year with the company. Chavez participates in the plan, but she did not know, and neither did Meares, whether any other employees did.

Chavez also attended a meeting in Corona with Nabors, Beman, and DePaola which was put on by the Riverside County Department of Agriculture on how to check for blood and other internal defects in eggs. Nabors testified that the meeting did not relate to management functions, but to how Chavez could do her job better. Chavez also stated that she had meetings, sometimes everyday, with Nabors, Beman and the foreman to go over her inspection reports.

IV. Analysis and Conclusions

Based on the foregoing findings of fact and assessments of witness credibility and demeanor, I conclude that Manuel Moreno and Margaret Chavez are supervisors within the meaning of Labor Code Section 1140.4(j) .

1. Moreno reprimanded Marina Rangel for being late to work. Company employee warning records show that Moreno reprimanded her for tardiness. Two other written reprimands were witnessed, if not prepared, by Moreno. Rangel was finally discharged by Moreno as shown on company termination records signed by him. Testimony by other employees showed that Moreno exercised independent judgment in initialing and adjusting the time cards of workers who punched in late for work or who forgot to punch in. Finally, Moreno used the title "foreman" and "supervisor" in signing reprimands and employee termination forms, and the night-shift supervisor Martinez admitted that he did not advise Moreno against using those titles. Persons who

discharged employees and changed time cards have been found supervisors under NLRB precedent.^{19/}

2. Moreno effectively recommended the assignment and transfer of employees to jobs in the processing plant and responsibly directed their work. Martinez testified that Moreno made recommendations on assignments which he followed 50% of the time. Two employees testified that they were told to move from one job to another within the plant. While testimony showed that employees generally did all the various jobs in the plant, and that Moreno could not assign employees to work outside the plant on the ranch, this does not mean that Moreno's movement of employees between jobs was not a transfer or assignment of work. Persons have been found to be supervisors who simply transferred other employees from one station to another within a department store.^{20/}

Furthermore, evidence showed that for substantial periods of the night shift Moreno was the only person involved in the immediate supervision of about 15 packers and candlers, because the night-shift supervisor was working at shipping and receiving. Martinez testified that he rarely checked the work of candlers and that supervision of other employees in the plant

^{19/} Sinclair and Rush, Inc., 185 NLRB 25, 74 LRRM 1724 (1970); see also JFB Manufacturing, Inc., 208 NLRB 2, 85 LRRM 1086 (1973) (Night shift" foreman was supervisor where he reprimanded employee and substance of reprimand later was written down on a company employee warning notice.)

^{20/} NLRB v. Big Ben Department Stores, Inc., 396 F.2d 78, 68 LRRM 2311 (2nd Cir. 1968); Benson Veneer Co., Inc., 398 F.2d 998, 68 LRRM 2692 (4th Cir. 1968).

was limited to rounds made from 8 to 10 times depending on the length of the shift. One candler testified that Moreno was the person to whom they reported problems.

3. Chavez discharged Juanita Sandoval, and a company vice-president admitted that she had the authority to suspend other employees. Furthermore, Chavez reported on substandard work in giving inspection reports to management. While Chavez's primary job responsibility was quality control, this would not prevent her from being a supervisor. Quality control persons have been found to be supervisors where they laid off other employees.^{21/s}

4. Chavez assigned workers to jobs and transferred them from job to job. One employee testified that she was told by Chavez to move from candling to egg breaking and that when this was refused, Chavez brought the plant manager who ordered her to do what she was told or punch out. A person who transfers employees between jobs in a department and who reported to management on the quality of work has been found to be a supervisor.^{22/}

5. Chavez responsibly directed work through direct orders to employees and through effective recommendations contained in her inspection reports to management. Chavez admitted that she would track down problems when her inspection revealed too many defective eggs. On those occasions, she would tell

21/ Liberty Sportswear Co., Inc., 183 NLRB 1236, 74 LRRM 1459 (1970).

22/ NLRB v. Benson Veneer Co., Inc., 398 F.2d 998, 68 LRRM 2692 (4th Cir. 1968).

candlers to watch more closely for cracked eggs; packers not to handle eggs roughly; and foremen to tell machine operators not to let eggs pile up and break. Chavez would put down in her daily inspection reports the names of any persons she spoke to, and sometimes would meet daily with management to discuss these reports. While the company argued that Chavez merely conveyed her finding to the foremen or plant manager and then followed their instructions as to what to do, evidence showed that she exercised independent judgment in locating a problem and took remedial action on her own initiative, and on some occasions even directed foremen in their work. Dairy Fresh argues that merely occupying a special position in the company in the eyes of the employees is not sufficient basis from which to conclude that a person is a supervisor.^{23/} While it is true that being a person of higher visibility, who engages in only minor coordination or supervision of work orders, does not alone make a person a supervisor,^{24/} evidence showed that Chavez was not only more visible, but also exercised significant supervisory powers over other employees.

6. Chavez attended a number of meetings with management persons. While this is not a primary indicator of her status as a supervisor, her attendance at the two meetings between Dairy Fresh management and a time study or efficiency consultant company indicated job responsibilities beyond those of

^{23/} Salinas Greenhouse Co., 2 ALRB No. 21 (1976).

^{24/} See Dairy Fresh Products, Co., 2 ALRB No. 55 (1976).

a quality control egg inspector who had no input into management decisions on work assignments and production through the exercise of her own independent judgment.

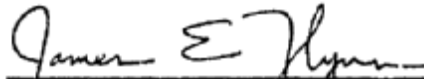
7. Evidence introduced by the company that both Moreno and Chavez were hourly employees who received vacation and health benefits different than those provided to salaried employees is not controlling. Such indicia are of secondary importance where evidence shows that the employees in question exercised one or more of the powers of a supervisor.

VI. Recommendation

I recommend that the challenges to the ballots of Manuel Moreno and Margaret Chavez be sustained on the ground that they are supervisors within the meaning of Labor Code Section 1140.4 (j) .

DATED: February 22, 1977.

Respectfully submitted,



JAMES E. FLYNN
Investigative Hearing Officer

JEF: jn