

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

SIGNAL PRODUCE COMPANY, BROCK RESEARCH, INC.,)	
Employer,)	Case No. 77-RC-13-E
and)	
UNITED FARM WORKERS OF AMERICA ,AFL-CIO,)	4 ALRB No. 3
Petitioner.)	
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DECISION AND
CERTIFICATION OF REPRESENTATIVE

Pursuant to the provisions of Labor Code Section 1146, the Agricultural Labor Relations Board has delegated its authority in this matter to a three-member panel.

Following a petition for certification filed by the United Farm Workers of America, AFL-CIO (UFW) on March 14, 1977, a representation election was conducted on March 21, 1977, among the agricultural employees of Signal Produce Company and Brock Research, Inc. The tally of ballots showed that there were 95 votes cast for the UFW; 9 for no union; and 18 unresolved challenged ballots.

The Employer filed timely objections to the election. Based upon a factual stipulation and supplemental stipulation of the parties, Investigative Hearing Examiner (IHE) Thomas Sobel issued his initial Decision in this matter, in which he found that Signal Produce Company and Brock Research, Inc., were not

joint employers and recommended that the election be certified only as to -the employees of Signal Produce Company. ^{1/} The Employer filed timely exceptions to the IHE's Decision and the UFW filed a response to the Employer's exceptions and cross-exceptions to the IHE's Decision.

The Board has considered the objections, the stipulations of the parties, the record and the -IHE's Decision in light of the exceptions and briefs and hereby affirms the rulings, findings, and conclusions of the IHE and adopts his recommendations. Accordingly, the petition is dismissed as to Brock Research, Inc.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid votes has been cast for United Farm Workers of America, AFL-CIO, and that, pursuant to Labor Code Section 1156, the said labor organization is the exclusive -representative of all agricultural employees of Signal Produce Company, for the purposes of collective bargaining, as defined in Labor Code Section 1155,2 (a) , concerning employees' wages, working hours and other terms and conditions of employment.

Dated: January 27, 1978

GERALD A. SROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

^{1/} Considered alone, Brock Research, Inc. was not at 50 percent of peak at the time of the election. All Brock employees voted challenged ballots at the election.

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In the Matter of:

SIGNAL PRODUCE COMPANY,
BROCK RESEARCH, INC. ,

Employer,

Case No. 77-RC-13-E

and

UNITED FARM WORKERS OF
AMERICA, AFL-CIO,

Petitioner.

Wm. Macklin, Byrd, Sturdevant,
and Pinney, for Employers.

Tom Dalzell, for United Farm
Workers of America, AFL-CIO.

DECISION

THOMAS SOBEL, Investigative Hearing Examiner: This case has been submitted for decision upon a Stipulation of Facts and Supplemental Stipulation entered into between Petitioner, United Farm workers of America (Union) and Employer (s) , Signal Produce Company (Signal) and Brock Research, Inc. (Brock) . By order dated June 24 , 1977, the Executive Secretary set the following issues for rearing: whether the regional director improperly determined that Signal Produce and Brock Research are joint employers; whether the regional director designated an improper payroll period to determine the eligibility of employees hired through a labor contractor and whether the United Farm Workers of America

violated the Access Rule. As the parties' stipulation contains no evidence relating to the Access violation set for hearing, it is hereby dismissed for failure of proof.

THE JOINT EMPLOYER ISSUE

On March 24, 1977, Union filed a Petition for Certification naming as employer Signal Produce Company and Brock Research, Inc. On March 16, 1977, in both its Response to Petition for Certification and by a separate filing, entitled "Employer's Pre-Election Request for Clarification of the Bargaining Unit," Employer(s) questioned the regional director's determination that Brock and Signal be considered joint employers and that the employees of both be included within a single unit. Although not a part of the formal stipulation, it is apparently undisputed that if Brock and Signal are joint employers, they are at joint peak and Signal is at its individual peak.^{1/} The parties have stipulated that Brock is not at its individual peak. Therefore, if Brock and Signal are not joint employers, the Union may be certified as collective bargaining representative for only the employees of Signal.

^{1/} In its brief, Union argues: "...although the two were at joint peak and Signal was at its individual peak, Brock was not at its individual peak." Brief, pp. 2-3. While Employers' brief is not so explicit, its Response to the Petition for Certification provides factual support for the Union's statement. This Response, under oath and required by law, 8 Cal. Admin. Code §20310, may well be a form of pleading and therefore constitute a judicial admission. Within, California Evidence, p. 472, see Employer's Response to Question 8 and Attachments thereto. Although there is a difference between one of the Employers' Responses and the facts contained in the stipulation, in view of the Employers' failure to contest peak for Signal and Brock combined and for Signal alone, the Union's characterization of the peak issue doubtless expresses the parties' agreement and it will not be necessary to resolve the difference. I advert to the response only to suggest a possible record source to fully delineate the peak contentions.

FACTS

Brock Research is a California corporation, the sole owner of which is Warren Brock. Although the stipulation identifies only one director (Warren Brock, Chairman of the Board), three officers are named: Donald Brock, President; David Brock, Vice-President and Eliot Moses (office unidentified). Donald Brock and David Brock are brothers; Eliot Moses, who is married to Mary Jean Moses [nee Brock] is their brother-in-law. Warren Brock is the father of Donald, David, and Mary Jean and the father-in-law of Eliot Moses. Signal Produce is a partnership organized in 1972; its partners are James Brock, another son of Warren Brock, David Brock, Mary Jean Moses, and Donald Brock.

Brock Research is primarily a citrus grower. Its fields are located on what is called the East Mesa of the Imperial Valley, approximately thirty miles east of El Centro and twenty-five miles east of Signal Produce's fields, which are in the vicinity on Calexico.^{2/} Signal is engaged solely in the growing, harvesting, and packing of asparagus in the Imperial Valley. Brock has approximately three hundred acres of citrus and, in 1977, sixty acres of asparagus. Although in 1976, Brock harvested its own asparagus, in the present crop year it neither harvested nor marketed it but sold the crop to signal. The purchase price was to be four dollars a field box with signal being responsible for all harvesting and transportation costs. Brock paid only the growing cost of the crop.

^{2/} If employers are joint, then, their operations are non-contiguous, while their geographic separation may give rise to a separate objection as to the scope of the unit, Employers have not raised it and evidently do not contest the regional director's determination on this point.

David Brock is the manager of Brock's field operations and oversees the day-to-day operations of the corporation; his brother, Donald, who, as previously noted, is also an officer of Brock, is manager of Signal's field operations and is responsible for the partnership's day-to-day management. Neither Signal nor Brock has ever been a party to a collective bargaining agreement covering their agricultural employees. Donald Brock individually determines the wages for field employees at Signal Produce. Donald and David, however, consult with each other in setting wages at Brock Research. Each business has its own office with a separate address and its own bookkeeper. Employees of Brock are paid by checks drawn against a Brock account and employees of Signal are paid by checks drawn against a Signal account. There is no interchange of supervisory personnel between Brock and Signal and during the 1976-77 season there was no interchange of employees at any other level.

Brock's peak employment occurs during the month of December during citrus harvest when it needs approximately thirty-nine workers to complete the harvest. At the time of the election Brock had only five employees. Signal has approximately twenty steady workers, although it needs nearly two hundred workers at harvest time. Its harvest employees are supplied through a labor contractor.

ANALYSIS

In Louis Delfino Co., et. al., 3 ALRB No. 2 (1976), the Board's recognition that "patterns of [agricultural] ownership and management are so varied and fluid" caused it to decline to announce any mechanical rule for determination of joint employer status, except that it did specify a number of factors that it would look to on a case-by-case basis in order to develop a body

of law in this area.^{3/} The factors cited by the Board are: similarity of operations, interchange of employees, common management, common labor relations policy, and common ownership.

In Abatti Farms and Abatti Produce, 3 ALRB No. 33, the Board approved this use of the slightly different NLRB criteria to determine the degree of functional integration of separate entities. I will combine both sets of factors in the ensuing analysis.

COMMON OWNERSHIP

It is obvious from the facts that there is no common ownership of Brock and Signal. Union argues that common ownership is established because "both Brock and Signal are owned by the Brock family." However, consanguinity is not a legal test of ownership.

COMMON MANAGEMENT/COMMON CONTROL
OF LABOR RELATIONS

Evidence as to common management is limited. David Brock is this manager of Brock's field operations and makes the day-to-day decisions affecting them; Donald manages Signal's field operations. There is no interchange of supervisory personnel between the two companies. The two brothers consult with each other in setting the wages at Brock; only Donald, however, deter-

^{3/} That fluidity which makes determinations of this type so difficult makes them critical as well for one of the chief ends of the Act is to encourage stable collective bargaining, Hall, "The Appropriate Bargaining Unit, Striking A Balance Between Stable" Labor Relations and Employ at Free Choice, 18 Western Reserve Law Review, 4T9, a purpose which is not served by joining entities only marginally or ephemerally related to each other. It is for this reason that the interests of neither employers nor employees are best served by in cases of this kind for the process of arriving at leaves us with the narrowest kind of record, which, evidently tailored in this case to the standards of a single opinion, threatens to turn the joint employer inquiry into exactly the kind mechanical exercise the Board sought to avoid.

mines the wages at Signal.^{4/} There is thus some evidence of common management and common control of labor relations policy (although not very much) .

INTERCHANGE OF EMPLOYEES/
INTERRELATION OF OPERATIONS

There is no interchange of employees, while Signal harvested the asparagus crop which Brock grew, this does not constitute interchange of employees in that Signal was then the owner, on the basis of an executory contract, of the asparagus it was harvesting. Thus, it was not harvesting Brock's crop, but its own. While not arguing that this harvesting arrangement represents interchange of employees , Union does argue that it is a critical fact in determining the joint employer question because it indicates functional integration of the two operations. "For the most part, Brock is the citrus end of the Brock family's agricultural enterprises and Signal is the asparagus end, but there occurs some interesting overlap in the [harvesting of] asparagus... ." Brief, p. 5. I think it erroneous , without evidence of common ownership, to view these entities as part of a "family's" agricultural enterprise. The

^{4/} The limitations of the stipulation with respect to an issue such as common management are readily apparent. Under general partnership law, all partners have equal rights in the management and conduct of the partnership business, Corporations Code, §15018(e) , except that the partners may, by agreement, limit their rights. How then, is the fact that Donald is the day-to-day manager of Signal to be construed: that he alone makes any management decisions, or only those on an on-the-spot basis? For there are a variety of decisions which, although not made on a daily basis, are clearly managerial in an overall policy sense and it is axiomatic that common management can exist on any level. Sakrete of Northern California v. NLRB, 332 F.2d 903, (9th Cir. 1964).

asparagus harvesting performed by Signal for Brock is not in the nature of custom work performed for Brock, but, as pointed out above, work performed for the owner of the crop by the owner. None of the features of an Abatti-type operation, such as the single payroll system, the interchange of employees, the invoicing system, the work performed by two specialized entities for an overarching partnership-owner, are present in this case.

SIMILARITY OF OPERATIONS

There is no evidence that the operations are similar

COMMON LABOR RELATIONS POLICY

Neither entity has ever been a party to a collective bargaining agreement. As Employers point out in their brief, the job classifications and rates of pay are different as between the two groups of employees.

Finally, in support of its position that the two entities be considered a single employer, the Union makes the following argument:

Whatever the family's reasons for separate structures for citrus and asparagus, they must defer for the purpose of the ALRA to the right of workers to one industrial unit with mobility out of purely seasonal work such as asparagus harvesting into the higher paying, less exhausting, more permanent citrus work. Form aside, in essence Brock and Signal are joint employers and were properly designated as such by the regional director.

In the first place, I do not find anything in the record to support the conclusions that citrus work is less exhausting and more permanent; secondly, neither do I understand the Act to have as one of the ends of collective bargaining the upward mobility of farm workers. Indeed, insofar as the Act enjoins a duty on the Board in this respect, it is only to superintend the process of good faith bargaining and not to shape it towards any particular

end. Labor Code §1135.2. Based upon the stipulation presented to me, I do not find that Brock and Signal are so interrelated under the Board's standards to be considered a single employer.^{5/}

PAYROLL PERIOD ISSUE ^{6/}

FACTS

The Petition for Certification was filed on Monday, March 14, 1977. Signal Produce has an established payroll period for its permanent employees which begins on Thursday and ends on the following Wednesday. March 3-9, therefore, represented the established payroll period immediately preceding the filing of the petition. However, Signal also employs through a labor contractor, El Don & Company. El Don daily pays the employees it supplies and Signal reimburses it weekly for the employees supplied for the previous week. With respect to these contractor-supplied employees, Board Agent David Ortiz notified Signal to prepare a second list for the period March 9-13. This period represents the five days immediately preceding the filing of the Petition for

^{5/} I do not view my decision in this case as enabling employers to evade the purposes of the Act by undergoing something like cellular division. The assertion by itself begs the question. These cases turn on their facts. If multiple entities, controlled by essentially the same people, evidence functional integration, they are joint employers. But I do not see much in this record.

^{6/} This issue involves only the employees of Signal and not of Brock.

Certification and, according to employer, does not correspond to any of its payroll periods. Signal objected to the use of the list at the pre-election conference although it apparently did not challenge every voter who appeared on the second list but not on the first. ^{7/} Twenty-nine persons worked during the March 3-9 payroll period who did not work during the five day period immediately preceding the filing of the petition; 30 persons worked during the five days immediately preceding the filing of the petition who did not work during the established Signal payroll period. Thus, 84 different employees were eligible to vote because of the choice of one payroll period over another.

The parties have further stipulated such turnover in a labor contractor crew is not unusual; that, in fact, it is customary and the employees within a labor contractor crew may change daily.

LEGAL ANALYSIS

The employer's position is that both this Board's regulations as well as its statute, properly construed, require the Board to use the statutory employer's payroll period in order to determine eligibility. The regulations provide:

Those persons eligible to vote shall include:

(1) Those agricultural employees of the employer who were employed at any time during the employer's last payroll period which ended prior to the filing of the petition, except that if the employer's payroll as determined above is for fewer than five working days/ eligible employees shall be all those employees who were employed at any time during the five working days immediately prior to the filing of the petition.

8 cal. Admin. Code §20352(a) .

^{7/} There were only 18 Challenged Ballots. Determination of the issue in a case like this goes to the conduct of the election itself and not to the eligibility of individual voters. Therefore it is not necessary for the employer to have challenged each employee on the disputed eligibility list in order to raise the matter of their eligibility after the election. See NLRB v. A.J. Tower co., 329 U. S. 324 (1946) .

Because only the employer's payroll period is mentioned, employer argues that only its payroll period may be used to determine the eligibility to vote. The statutory argument is similar: because labor contractors are excluded from the definition of statutory employers, the legislature must have meant that only the statutory employer's payroll period could be used to determine eligibility. "It would be inconsistent for the Board to treat Signal Produce as the employer of employees obtained through a labor contractor for purposes of representation elections and unfair labor practice charges, but to deny that it is the employer when establishing the applicable payroll period." Employer's Brief, p. 11.

The union argues that there is no inconsistency because the labor contractor's payroll is imputed to the employer:

Signal had two payroll periods. The first period was, as claimed, seven days for steady workers. The second, for harvest employees, was daily, established and administered by Signal through its agent, the El Don Company. The fact that Signal paid El Don on a weekly basis is of no more significance and carries no more weight than would the weekly transfer of funds from a company's general account into its payroll account. Just as an employer is liable for unfair labor practices committed by a labor contractor in his employ, so are a labor contractor's payroll practices attributable to an employer. Union's Brief, p. 7.

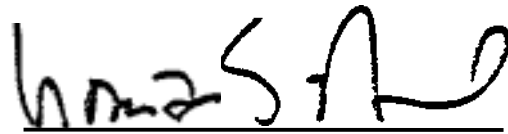
The labor contractor, then, is employer's agent not only for the purposes of supplying employees but also for paying the employees it provides. I agree with the union's contention in this regard.^{8/}

^{8/} If there is an inconsistency between the statute and the regulation, It is that a day's payroll may be a single payroll period so that only the single day preceding the filing of the petition (and not the five days of the regulation) ought to be used for eligibility. Because such a reading would limit eligibility, especially assuming the turnover suggested by the stipulation, it does not appear unreasonable for the Board to have imputed a longer "payroll period" to an employer. In any event, it is for the Board in the first instance to interpret its statute and the Board agent cannot be held to have erred in following the interpretation given in the regulations. Thus, employer's reliance on Active Sportswear, 104 NLEB No. 138, is misplaced: in this case the

S20352 (a)(1) could be written with greater clarity to indicate that the daily period may be either that of the employer himself or of him through his agent, but the statutory agency being clear, the payroll of the labor contractor is that of the employer.

I recommend the election be certified as to the Employees Produce Co.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas Sobel", written over a horizontal line.

THOMAS SOBEL
Investigative Hearing Examiner, ALRB

^{8/} (cont.) regional director used the payroll period designated by the regulations. See Grodin, California Agricultural Labor Act; Early Experience Industrial relations, Vol.13, p.275, at 283.