

Holtville, CA

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

JOE MAGGIO, INC.,)
Employer,) Case No. 76-RC-16-E(R)
)
and) 4 ALRB No. 65
)
FRESH FRUIT & VEGETABLE WORKERS,)
LOCAL P-78-B, AMALGAMATED MEAT)
CUTTERS AND BUTCHER WORKMEN OF)
NORTH AMERICA, AFL-CIO,)
Petitioner.)

DECISION AND ORDER ON PETITION FOR
CLARIFICATION OF BARGAINING UNIT

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.

On August 24, 1976, the ALRB certified Fresh Fruit and Vegetable Workers, Local P-78-B, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, the Petitioner herein, as the exclusive representative of a collective bargaining unit consisting of "all maintenance and production employees of the Employer engaged in receiving, grading, packing, and loading of fresh vegetables in Imperial County, California".

On May 30, 1977, the Employer, Joe Maggio, Inc., and the Union herein executed a "Memorandum of Understanding", which provided that "a classification for maintenance men... does not apply to shop mechanics employed in the packing house

since they are not within the certified bargaining unit".^{1/}
Subsequently, the parties signed a collective bargaining agreement applicable to all agricultural employees.

Thereafter, on March 15, 1978, the Union herein filed a petition for clarification of bargaining unit, pursuant to 3 Cal. Admin. Code 20335, seeking a determination by this Board as to whether the shop mechanics employed at the Employer's packing shed in Holtville, California, are agricultural employees engaged in maintenance work and therefore included in the collective bargaining unit.

On May 1, 1978, the San Diego Regional Director for the ALUB issued his report on the issue herein, in which he found the shop mechanics to be agricultural employees as defined in Labor Code Section 1140.4 (b) . He concluded that these mechanics work exclusively for the Employer performing functions incident to or in conjunction with the Employer's farming operation, thus falling within the "secondary" definition of agriculture. Farmers Reservoir and Irrigation Co. v. McComb, 337 U.S. 755, 763 (1949) .

Pursuant to these findings and 8 Cal. Admin. Code Section 20385 (c) , the Regional Director recommended that the certification be amended to include the shop mechanics in the bargaining unit.

The Employer has excepted to the report of the Regional Director, pursuant to 3 Cal. Admin. Code Section

^{1/} The Employer currently has eight employees who perform as shop mechanics: Joe Escalera, Jerry Calderon, Eustaquio Magallanes, Jose Luis Munoz, Francisco Chapa, Roberto Villalobos, Raul Palacio, Joe Velasco.

20393 (b) , pointing out that it also operates on its premises in Holtville, California, a commercial packing shed in which the produce of other growers accounts for 100 percent of the pack, and that its shop mechanics spend "up to 10 percent and more" of their time performing maintenance work in the commercial packing shed. Based on these facts, the Employer contends that the shop mechanics fall outside the coverage of the Agricultural Labor Relations Act, and may not properly be included within a bargaining unit of agricultural employees, We disagree.

One approach taken by the NLRB in defining its jurisdiction focuses on whether the operation itself is agricultural or commercial. DiGiorgio Fruit Corp., 80 NLRB 335 (1948); Garin Co., 148 NLRB 1499 (1946). Another NLRB approach applies to employees who divide their time between agricultural and non-agricultural duties. These mixed-work employees, if engaged in a regular amount of non-agricultural activity, will be subject to NLRB jurisdiction with respect to that portion of their work time spent in such activity. Olaa Sugar Co., Ltd., 118 NLRB 1442 (1957).

The latter approach applies in the instant case, as the eight shop mechanics are clearly mixed-work employees. A determination as to their inclusion in the unit thus hinges upon the extent to which they engage in agricultural rather than non-agricultural work.

It is clear from the record that the shop mechanics spend a regular and substantial portion of their time engaged

in maintenance work which is incident to and in conjunction with the Employer's primary agricultural operation, and that they are therefore agricultural employees within the meaning of Labor Code Section 1140.4 (b).^{2/}

ORDER

Accordingly, we uphold the findings and conclusions of the Regional Director, and hereby order that the Employer's shop mechanics be included in the bargaining unit represented by the union, except as to that portion of their work which is performed in the Employer's commercial packing shed.

DATED: September 22, 1978

GERALD A. BROWN, Chairman

ROBERT B. EUTCHINSON, Member

JOHN P. McCARTHY, Member

^{2/} The Employer's reliance on Carl Joseph Maggio, Inc., 2 ALRB No. 9 (1976), as authority for its position is misplaced. In that case, we held that employees who worked exclusively in a commercial shed (where other growers' produce accounted for 10 to 15 percent of the total pack) were not agricultural employees.

CASE SUMMARY

Joe Maggio, Inc. 4 ALRB No. 65
Case No. 76-RC-16-E(R)

R . D . REPORT

On March 15, 1978, the Union herein, Fresh Fruit and Vegetable Workers, Local P-78-B Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, filed a petition for clarification of an existing Bargaining Unit, pursuant to 8 Cal. Admin. Code 20385, seeking a determination by this Board as to whether the shop mechanics employed at the Employer's packing house are agricultural employees and therefore included in the collective bargaining unit. On May 1, 1978, the Regional Director issued his report on the Union's motion, in which he found that the shop mechanics perform functions incident to or in conjunction with the Employer's farming operation, and therefore concluded that they are agricultural employees as defined in Labor Code Section 1140.4 (b).

BOARD DECISION

The Board affirmed the findings and conclusions of the Regional Director, holding that the shop mechanics were "mixed-work" employees engaged in a regular amount of agricultural activity, citing Olaa Sugar Co., Ltd., 118 NLRB 1442 (1957). Accordingly, the Board ordered that the shop mechanics be included in the bargaining unit represented by the Union, except as to that portion of their work which is performed in the Employer's commercial packing shed.

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This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

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