

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

HOLTVILLE FARMS, INC.,	)	
	)	
Employer,	)	Case No. 78-RC-2-E
	)	
and	)	5 ALRB No. 48
	)	
UNITED FARM WORKERS	)	
OF AMERICA, AFL-CIO,	)	
	)	
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 proceeding to a three-member panel.

Following a Petition for Certification filed by the United Farm Workers of America, AFL-CIO (UFW), a representation election was held on February 13, 1978, among the agricultural employees of Holtville Farms, Inc. (Employer). The Tally of Ballots showed the following results:

UFW .....	20
No Union .....	7
<hr/>	
Challenged ballots ...	4
Total .....	31

Pursuant to Labor Code Section 1156.3(c) the Employer timely filed two objections to the election, one of which was dismissed by the Executive Secretary pursuant to 8 Cal. Admin. Code 20365(e). On March 29, 1978, a hearing was held on the

Employer's other objection: that the petition was not timely filed under Labor Code Section 1156.4.<sup>1/</sup> On July 18, 1978, Investigative Hearing Examiner (IHE) Susan Matcham Urbanejo issued her initial Decision, in which she recommended that the objection be dismissed and that the UFW be certified as the exclusive collective bargaining representative of all the Employer's agricultural employees. The Employer filed exceptions to the IHE's Decision and a brief in support thereof, and the UFW filed a Brief in Opposition to the exceptions. Subsequently, the Employer' filed a Motion for a New Hearing, dated January 16, 1979, seeking to reopen the record on the basis that employment figures obtained during October 1978, further corroborate its position.

The Board has considered the objections, the record, and the IHE's Decision in light of the exceptions and briefs filed by the parties, and has decided to affirm the IHE's rulings, findings and conclusions as modified herein, to dismiss the objection, and to certify the UFW.<sup>2/</sup>

In Charles Malovich, 5 ALRB No. 33 (1979), we held that our review in prospective peak cases will be based upon whether the Regional Director's peak determination was a reasonable one in light of the information available at the

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<sup>1/</sup> All references herein are to the Labor Code unless otherwise stated.

<sup>2/</sup>The Employer's Motion for a New Hearing is hereby denied. Domingo Farms, 5 ALRB No. 35 (1979)

time of the pre-election investigation of a petition for certification. We further held that in reviewing a peak objection during post-election proceedings under Labor Code Section 1156.3(c), we would not limit ourselves to the actual calculations or methods applied to the available data during the Regional Director's investigation, but would independently determine whether a finding of timely filing was reasonable based upon the information available at that time.

In this case, the Employer had contended that an anticipated increase in acreage would result in a higher peak employment in 1978 than in 1977, and had submitted data to the Regional Director in support of its prediction. This anticipated acreage increase was the sole basis for its contention that the petition was not timely filed.

The Employer has excepted to the IHE's decision to limit her consideration of the peak issue to the actual data which were available to the Regional Director. We have considered the additional evidence adduced at hearing only to the extent that it constitutes a more detailed amplification of such data or further explanation of its impact on the Employer's anticipated labor requirements. At both the pre-election and hearing stages of this case, the Employer submitted specific figures concerning the acreage it expected to have under cultivation during its 1978 peak period. The two sets of figures are substantially similar, and no party has challenged or questioned the validity of the acreage estimates.

The question before us concerns the probable effect

of the anticipated acreage increases on the Employer's labor requirements during the 1978 peak employment period. The IHE approached this question by using the Employer's 1977 peak payroll records and 1977 acreage figures to compute the average number of acres cultivated per person during the 1977 peak season. She then divided this figure into the estimated acreage increase for 1978, to determine the probable number of additional positions which the additional acreage would require. She found corroboration for her computation in data contained in a Department of Employment Development (EDD) publication, in which the person-hours required to perform specific tasks were estimated on a per-acre basis. The Employer excepted to the IHE's reference to the EDD data, but did not specifically take issue with the formula applied by her to its own acreage data.

We first note that the Employer's exceptions fail to challenge the formula employed by the IHE in making her peak employment projections for the 1978 season. That formula is based on the Employer's own employment and acreage figures and therefore takes into account its own particular methods of production. We are aware that the EDD study, which appears to corroborate the IHE's computation, does not account for individual variations in diverse agricultural operations. We agree that it would be undesirable to base our estimate of peak employment solely on such general studies and to ignore specific and readily-available data such as the Employer herein submitted to the Regional Director and to the IHE. However, notwithstanding

the margin of error in such studies, they provide general guidelines as to the relationship between acreage, production processes, and labor needs from a neutral government agency, not a party to the proceedings before us.

By contrast, the Employer would have us rely on the estimates of its general manager, Mr. Chell, based on his long experience in this field of agriculture and upon his credibility as a witness. However, Mr. Chell's testimony does not explain how the Employer's projected acreage increases should be expected to produce increases in peak labor requirements which are so disproportionate in light of its own 1977 data.<sup>3/</sup> We think that it is precisely to avoid relying upon such general and unsupported speculation of an interested party, however well informed and credible, that we are directed by Labor Code Section 1156.4 to seek corroboration in crop and acreage data of general statewide applicability. We find that the formula applied by the IHE is an appropriate method for projecting future peak employment, and that her use of an EDO publication to corroborate her estimate was proper.

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<sup>3/</sup> At the hearing, the Employer referred to the addition of new sprinkler acreage, and there is some testimony concerning labor requirements of different types of sprinkler systems. The impact of this data on the Employer's labor requirements was not clarified, however. Moreover, both in Mr. Chell's testimony and in the Employer's exceptions, the acreage increases are urged as the basis for Mr. Chell's estimates, with reference to the sprinkler system occurring almost as an afterthought. In addition to the speculative nature of this evidence, we note that it constitutes a change in production methods rather than an increase in acreage, and was not raised before the Regional Director as a basis for the Employer's peak objection.

The IHE found that a total of 28 employees and an average of 23 employees worked during the election eligibility period. She further found, based on a projected increase of eight employees, that a total of 57 employees and an average of 47 employees would work during the Employer's 1978 peak period. Applying either of the methods used by the Board in determining timeliness, we note that the payroll at the time of the election falls within a narrow margin of 50 percent of the estimated peak employment.<sup>4/</sup> We conclude that the petition is timely filed, as the margin of error inherent in the peak estimate is reasonable in this case. See Wine World, Inc., dba Beringer Vineyards, 5 ALRB No. 41 (1979).

Accordingly, the Employer's objection is hereby dismissed, the election is upheld and certification will be granted.

#### CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid votes has been cast for the 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 Holtville Farms, Inc., in the State of California for purposes of collective bargaining, as defined

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<sup>4/</sup>Under Mario Saikhon, Inc., 2 ALRB No. 2 (1976), the 23 positions filled during the eligibility period are compared with 47 estimated positions during the projected peak period, and the margin of error is 2.1 percent (1\*47). Under Donley Farms, Inc., 4 ALRB No. 66 (1978), the 28 employees working during the eligibility period are compared with the estimated 57 employees during the projected peak period, and the margin of error is 1.8 percent.

in Labor Code Section 1155.2(a), concerning employee's wages  
working hours and other terms and conditions of employment.

Dated: July 19, 1979

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

JOHN P. McCARTHY, Member

CASE SUMMARY

Holtville Farms, Inc.

5 ALRB No. 48

Case No. 78-RC-2-E

IHE DECISION

After a representation election conducted on February 12, 1978, which was won by the UFW, a hearing was held on the Employer's objection that the representation petition herein was not timely filed pursuant to Labor Code Section 1156.4. The Employer contended that its 1978 peak employment would exceed its 1977 peak employment as a result of increased acreage under cultivation. It submitted evidence in support of that contention to the Regional Director in the course of the pre-election investigation, and additional evidence thereof at the hearing. The IHE projected the increase in employment based on payroll and acreage data submitted to the Regional Director during the course of the pre-election investigation, and, noting data corroborating her projections in a publication issued by the State of California Department of Employment Development (EDD), she concluded that the petition was timely filed. The Employer excepted to the IHE's failure to consider post-election data concerning peak and to her reference to the EDD document.

BOARD DECISION

Citing Charles Malovich, 5 ALRB No. 33 (1979), the Board concluded that post-election data concerning a pre-election projection of peak employment should be considered only to the extent that it constitutes an explanation or amplification of pre-election data submitted to the Regional Director or further explains the impact of such data on the Employer's anticipated labor requirements. The Board approved the formula used by the IHE to project the Employer's 1978 peak employment. It further approved her reference to EDD data to corroborate the results of that formula, noting that such information is "crop and acreage data of statewide applicability" of the type referred to in Labor Code Section 1156.4, and provides a neutral reference point for evaluating estimates based on the Employer's pre-election data.

On comparing the eligibility payroll period with the projected peak employment period under the established Saikhon and Donley formulas, and allowing for a reasonable margin of error in the peak estimate (see Wine World dba Beringer Vineyards, 5 ALRB No. 41 (1979), the Board concluded that the petition was timely filed.

Objections dismissed; election upheld; UFW certified as the collective bargaining representative of the Employer's agricultural employees.

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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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STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:

HOLTVILLE FARMS, INC.,

Case No. 78-RC-2-E

Employer,

and

UNITED FARM WORKERS OF AMERICA,  
AFL-CIO,

Petitioner.

William F. Macklin, of Byrd,  
Sturdevant, Nas s if and Pinney  
for the Employer.

Tom Dalzell and Anita Morgan,  
for the United Farm Workers of  
America, AFL-CIO.

DECISION

STATEMENT OF THE CASE

SUSAN MATCHAM URBANEJO, Investigative Hearing Examiner:

This case was heard before me on March 29, 1978, in Holtville,  
California.

A Petition for Certification was filed on February 6, 1978, by  
the United Farm Workers of America, AFL-CIO (hereafter "UFW"). An  
election was held on February 13, 1978, with the following results:

United Farm Workers	20
No Union	7
Challenged Ballots	<u>4</u>
Total	31

Thereafter, the employer filed a timely petition pursuant to Cal. Lab. Code §1156.3 (c) objecting to the certification of the election. The Executive Secretary dismissed one of the two objections pursuant to 8 Cal. Admin. Code §20365(e). Evidence at the investigative hearing was limited to whether the certification petition was timely filed with respect to the requirements of Cal. Lab. Code §1156.4.

The employer and the UFW were represented at the hearing and were given full opportunity to participate in the proceedings. Both submitted post-hearing briefs.

Upon the entire record, including my observation of the demeanor of the witness, and after consideration of the arguments of the parties, I make the following findings of fact, conclusions and recommendations.

#### FINDINGS OF FACT

##### I. Jurisdiction

Neither the employer nor the UFW challenged the Board's jurisdiction in this matter. Accordingly, I find that the employer is an agricultural employer within the meaning of Cal. Lab. Code §1140.4(f).

##### II. Peak

The employer, Holtville Farms, grows lettuce, alfalfa, grain and cotton in the Imperial Valley of California. It harvests all its own crops except for lettuce, which is harvested by Growers Exchange.

###### A. Past Peak Periods

The sole witness for the employer on the determination of the peak issue was Gilbert Chell, General Manager of Holtville Farms.

He testified that the company's peak period of employment was in October for the year 1977 and that peak has traditionally been in October. During the peak season the commodities which require labor are lettuce, alfalfa and cotton. The most labor intensified of these three crops is lettuce. Payroll records for the month of October for the last three years were submitted as exhibits.<sup>1/</sup> They indicate the following:

CHART NO. 1<sup>2/</sup>

Week Ending	WED	THU	FRI	SAT	SUN	MON	TUE	Total No. Workers	Average Employee Days
<u>1975</u>									
October 7	24	27	30	24	12	22	21	32	23
October 14	22	23	23	25	16	26	27	32	23
October 21	22	25	22	21	8	27	28	30	22
October 28	28	31	30	26	10	31	31	38	27
<u>1976</u>									
October 5	27	31	30	30	29	33	26	37	30
October 12	30	27	29	19	15	28	31	37	26
October 19	27	26	26	26	9	20	22	32	22
October 26	24	25	26	26	11	21	24	30	22

1/ The 1975 figures are derived from UFW Exhibit 3, the 1976 figures from UFW Exhibit 2, the October 25, 1977 figures from Joint Exhibit 1, and the remaining 1977 figures from UFW Exhibit 1.

2/ The UFW in its brief, uses different numbers. I arrived at the above numbers by counting the payroll records for the various periods. They will be used for all peak calculations in this opinion.

1977

October 4	39	38	42	40	31	39	38	44	38
October 11	31	31	16	35	10	36	41	41	27
October 18	35	36	35	42	36	35	39	43	37
October 25	40	42	41	39	37	33	41	49	39

The UFW does not dispute the employer's contention that peak season is traditionally in October. My own computations, those of the UFW and the employer indicate that the peak payroll period for the past year was the week of October 25, 1977.

Chell testified to the activities of the employer with regard to each crop during the peak season. With respect to lettuce, the employer plants, applies herbicides, cultivates, injects fertilizer, irrigates by both the flooding method and sprinkler method, installs pipes and arranges ditches.

With respect to alfalfa, Chell testified that the employer irrigates, cuts, rakes and bails. With respect to cotton, the employer engages in irrigation. Grain requires no labor at all during this season.

#### B. Pre-Petition Period

The UFW and the employer submitted payroll records for the eligibility period as a joint exhibit. The payroll records revealed a total of 25 employees worked during the eligibility period.<sup>3/</sup> Additionally, the UFW contends that Holtville Farms employed four other employees whose payroll records should have been

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<sup>3/</sup> A discrepancy exists between the payroll records and the eligibility list, in that the Tally of Ballots indicates 27 voters were on the eligibility list and 27 voters voted unchallenged.

submitted for the purpose of determining peak. These four persons are Apolinar Gerardo (water truck driver), Manuel Placencia (mechanic), Luis Sanchez (mechanic), and Irene Reese (clerical). Neither party stated whether these employees voted, or if they did, whether their votes were challenged.

An employer is obligated to supply the regional office with the names of employees employed each day during the payroll period immediately preceding the filing of the petition. 8 Cal. Admin. Code §20310 (a) (3). From this list the eligibility list is made. Although the Act provides that only agricultural employees are eligible to vote, the issue of who is an agricultural worker is not one which the employer can decide by submitting payroll records selectively to the regional office. The employer should supply the names of all possible agricultural employees who worked during the eligibility period, and any dispute regarding eligibility to vote can be decided at the pre-election conference or through challenged ballots.

Normally a party contesting the eligibility of a voter must challenge the prospective voter in order to preserve the issue for post-election proceedings. Hemet Wholesale, 2 ALRB No. 24 (1976). In the present situation, however, the issue is not whether certain employees can vote, but whether the names of these employees should have been included on the payroll records submitted by the employer for the purpose of determining peak and composing an eligibility list. The UFW elicited enough information from witness Chell concerning the four employees to establish that the payroll records of at least three of these employees should have been submitted for those purposes.

General Manager Chell testified that the mechanics were employed during the eligibility period and that they worked a five day week. The mechanics are involved in the repair and maintenance of machinery used exclusively in conjunction with the employer's agricultural operations. Such mechanics are properly within the jurisdiction of the ALRB. Carl Joseph Maggio, 2 ALRB No. 9 (1976); Mann Packing Co., 2 ALRB No. 15 (1976); Salinas Green House Co., 2 ALRB No. 21 (1976).

Chell testified that the water truck driver was employed during the eligibility period and worked a five day week. He watered roads to keep dust down in the fields. The Board has held that a truck driver who works full-time for a single employer, and performs duties in conjunction with the employer's agricultural operations is an agricultural employee. Dairy Fresh Products Co., 2 ALRB No. 55 (1976); Anderson Farms Co., 3 ALRB No. 48 (1977).

Chell testified that the clerical was employed during the eligibility period and worked a five day week. Her job is to take care of payroll records. No further testimony was given on her responsibilities or what her position was in relation to management. The Board has ruled that clericals who take inventory are agricultural employees in that they work in conjunction with the employer's agricultural operation. Hemet Wholesale, 2 ALRB No. 24 (1976). Keeping payroll records would also most likely be considered to be in conjunction with the employer's agricultural operations. However, the Board has suggested that payroll work employees may be in a confidential capacity to persons responsible for an employer's labor relation policy. Ibid, n.14. Without additional information on this

particular clerical's duties, I am unable to conclude that she should have been an agricultural employee and therefore included on the eligibility list for the purpose of determining peak.

Counting in three employees with the employment figures revealed by the payroll records, gives the following daily employee count for the eligibility period.<sup>4/</sup>

CHART NO. 2 <sup>5/</sup>	
January 30	27
January 31	25
February 1	15
February 2	21
February 3	28
February 4 (Sat)	8
February 5 (Sun)	3

C. Projected 1978 Peak

Gilbert Chell testified that the work force for Holtville Farms would increase during the prospective peak season due to increased acreage under cultivation by the employer and a corresponding need for increased labor. At the time of the employer's Response to the Petition for Certification, the following information on projected increased acreage was submitted to the ALRB regional office by Chell:

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4/The employer failed to dispute the allegation that these three employees are agricultural employees in its brief or at the hearing,

5/ These figures are based on my own count of the payroll records plus the two mechanics and the water truck driver. They differ from the figures used by the UFW in its brief.

CHART NO. 3

<u>Crops and Acres</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>
Lettuce	1360	1550	1850
Grain	1090	860	1200
Cotton	-0-	430	430
Alfalfa	-0-	595	595
Totals	2450	3435	4075

This projection was prepared in January, prior to the election, by Chell and Hal Mueller, a principal of the company. The purpose of the projection was to give the company an idea of how much land and equipment should be obtained for the coming year. Besides the payroll records, it was the only statistical information on prospective peak supplied to the regional office by the employer.

At the hearing the employer submitted additional information on peak. General Manager Chell testified that he would need three to four new people to work a 50 acre increase in alfalfa; 20 to 25 people to handle 190 acres of new sprinklers and the increased lettuce acreage; and possibly a contract crew of 25 to 30 to assist the Growers Exchange Company which normally does the weeding and thinning of the employer's lettuce. Chell also testified that the number of lettuce workers should be increased because employees were overworked during the 1977 season. None of the above information was presented to the Board agent at the regional office at the time of the filing of the petition, although now it is offered to substantiate the employer's contention that employment in October 1978 will be so high as to make the February filing of the petition untimely.



ANALYSIS AND CONCLUSIONS

This objection involves predicting prospective peak. It is a case of first impression before the Board in that the peak season in question has not yet arrived. Thus the hearing officer and the Board are put in the position of the Board agent in deciding if the Petition for Certification was indeed timely filed.

There are two issues which must be addressed when facing a prospective peak problem. They are: 1) determining the correct number to use for prospective peak, and 2) using an appropriate method to determine if the number of employees during the eligibility period represents at least 50 percent of the employer's peak employment.

A. Prospective Peak Number

With regard to this issue, it is necessary to consider the information received by the Board agent in the regional office at the time the Petition for Certification and the Employer's Response was filed.

The Board agent and regional director have a duty to investigate a petition within seven days of its filing and make a determination as to whether it is timely. Cal. Lab. Code §1156.3 (a). Likewise the employer has a duty to provide information if it disagrees with the petitioner's contention that the number of employees currently employed is 50 percent or more of the employer's peak agricultural employment. 8 Cal. Admin. Code §20310 (a) (6). If the Board agent and regional director are to make an accurate prediction of peak within the allowable time frame, the employer should provide all its available information, particularly as in this case, when

the information involves future plans and policies and thus would be difficult to discover through an independent investigation. Providing such information after the petition has been accepted and the election held, causes needless delay and expense if, as a result the election, is overturned.

On one occasion the Board has taken a hindsight approach to peak. In John J. Elmore, 3 ALRB No. 63 (1977), peak allegedly occurred after the election, but before the investigative hearing. When the employer failed to substantiate its contention of peak with the actual figures, the Board dismissed the employer's objection, That case is clearly distinguishable from the case at hand in that the peak season here has not yet arrived.

Cal. Lab. Code §1156.4 requires the Board to "estimate" peak agricultural employment. It also requires that the employer's payroll "reflect" 50 percent peak. Additionally, Cal. Lab. Code §1156 (a) (4) provides that upon receipt of a petition, the Board shall immediately investigate it, and if the Board has "reasonable cause" to believe that a question of representation exists, the Board shall direct an election. All of this language suggests that the Board agent and regional director shall make a reasonable determination of peak based on the information on hand at the time of the filing of the petition.

In the present case, the employer submitted the following to the regional office on the question of prospective peak: payroll records, a declaration of Chell stating that the current employment figures show that the employer is less than 50 percent of last year's peak, and a chart identical to Chart No. 3 set out on page 7 of this

opinion. Looking at Chart No. 3 and taking into consideration that no labor is required for grain during October, one would conclude that the only increase in production on the part of the employer is the 300 new acres of lettuce. There is no mention of the 190 acres of new sprinkler system, the intent of the employer to shorten workers' hours by hiring additional workers, the addition of 50 acres of alfalfa or the possibility of hiring a contract labor crew. The employer failed to supply this information at the time of the filing of the petition despite the fact, as testified to by General Manager Chell, that it was common for the company to make crop and acreage predictions in January so that land and equipment can be obtained ahead of time.

This failure to provide information at the proper time defeats the purpose of the Act and regulations which require a determination on peak within seven days of the filing of the petition. The employer in effect is taking the position that an entirely new evaluation of prospective peak should be made at this time based on the information that is now being provided. My approach, however, will be to review the decision of the Board agent based on the information provided to him or her at the time of the filing of the petition. If the determination to hold the election based on that information was an abuse of discretion then the election should be overturned.

Based on the information supplied by the employer at the time of the filing of the petition, a practical way to calculate future peak would be to consider the past year's peak in conjunction with the employer's crop and acreage statistics for lettuce

production. The employer farmed 1550 acres of lettuce in 1977 according to Chart No. 3. The payroll records which reflect what crop was worked as well as hours, reveal that an average of 37 persons farmed 1150 acres during the 1977 peak week.<sup>6/</sup> This averages out to one person for every 41 acres. If, in 1978, 300 acres of lettuce are added, approximately eight new worker positions will be needed to handle the increase. I find, based on the information supplied in the Employer's Response, that eight new worker positions is a number which reasonably reflects the increased labor need of the employer for the 1978 peak season.

This number can be supported by looking at more objective crop and acreage statistics.<sup>7/</sup> In a study called "Estimated Man-Hour Requirements in Selected California Crops 1976"<sup>8/</sup> done by John W. Mamer and Sue E. Hayes, the following estimated man-hours of labor per acre were found for the type of activities performed by Holtville Farm employees in lettuce in the month of October.

fertilizing	0.3
cultivate	0.3
irrigate (2X) 2.0	4.0
cultivate	<u>0.3</u>
TOTAL	4.9 hours per acre per month, or 1.2 hours per acre per week

<sup>6/</sup> This figure is less than the overall peak average, since two of the employees during 1977 peak week worked in alfalfa.

<sup>7/</sup> Cal. Lab. Code §1156.4 requires the Board to rely on crop and acreage statistics which shall be applied uniformly throughout the State of California. In Ranch No. 1, Inc., 2 ALRB No. 37 (1976), n. 6 the Board interpreted this provision to apply only to future peak.

<sup>8/</sup>Mamer, John W. and Sue E. Hayes, "Man-Hour Requirement in Selected California Crops 1976," Cooperative Extension, UC Berkeley.

Multiplying 1.2 hours per acre by the 300 new acres, results in 360 hours of labor needed to handle the increase. If, as the payroll records show, the usual employee during peak week works an average of ten hours a day, seven days a week, then five new positions would have to be filled by the employer.<sup>9/</sup> General Manager Chell testified that the employer also does ditch work, pipe laying, precision planting and incorporation of herbicides during peak time. The Mamer and Hayes study shows such work as being performed in September. However, giving the employer the benefit of the doubt, only three additional job slots would be needed to handle these activities given the increased acreage.<sup>10/</sup> Thus these statistics bear out an estimate of a need for no more than eight job slots to handle 300 new acres of lettuce.

B. Prospective Peak Method

Once it is determined that the employer will need eight new positions for the coming peak season, the objection turns on what method is used to determine whether the number of agricultural

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9/ This figure is arrived at by multiplying seven days by ten hours -an employee would put in 70 hours a week during peak week. Three hundred acres would then be divided by 70 - resulting in approximately five positions.

10/ The study indicates the following hours needed to perform these activities for September:

incorporate herbicide	0.3
precision plant	0.3
sprinkler irrigate	2.0
(move pipe)	
ditch	0.03
TOTAL	2.63 hours per acre per month
	.65 hours per acre per week

0.65 times 300 acres is 195 hours; dividing 195 by 70 hours results in approximately three new positions.

employees on the employer's payroll during the eligibility period reflects at least 50 percent of the peak agricultural employment.

The employer argues that the following two step method should be used:

1) Compare the eligibility period with the prior season's peak employment figures using the method of averaging set out in Mario Saikhon, 2 ALRB No. 2 (1976). In Saikhon an average number of employee days for the eligibility period was compared to an average number of employee days for the peak period. The employer averages all seven days of the eligibility period and arrives at a figure of 19. Averaging for the peak period, the average number of employee days is 39. Comparing 19 to 39 the petition would be untimely filed. The UFW in applying the Saikhon formula argues that only the five week days should be averaged. This raises the issue of representative days mentioned in Ranch No. 1, 2 ALRB No. 37 (1976). In that case the Board adopted the idea of unrepresentative days to deal with a seven day payroll period where few employees worked on Sunday. Ranch No. 1, supra, does not make clear whether a day is to be considered unrepresentative solely by comparing it to other days where a greater number of employees worked. Here the UFW supports excluding Saturday and Sunday as unrepresentative, on the basis of General Manager Chell's testimony that employees during the eligibility period generally worked a five day week as compared to employees during the peak period who work a seven day week. On the basis of that testimony and the fact that the number of employees during the week days is significantly greater than the number employed on the weekends, I find that only the five week days should be used to find an average for the eligibility period.

Comparing an average of 23 to the past peak average of 39, a petition would be timely for past peak.

2} The employer would then consider whether there will be an increase or decrease in crops and acreage for the current calendar year. Using the projected increase of eight new job positions, and then comparing the 23 average for the eligibility period to a 47 average for the prospective peak period; the result would be that the petition is untimely by one job slot.

The UFW argues that two possible theories could be used to determine peak. The first theory is that set forth in the cases of Valdora Produce Co., 3 ALRB No. 8 (1977) and Kawano Farms, Inc., 3 ALRB No. 25 (1977), where the Board compared the number of employees during peak with the number of employees during the eligibility period. This is a difficult theory to use for prospective peak because of the uncertainty in the exact number of employees that will be hired. Although I have determined that the employer will need eight job slots, it is possible that the employer will hire more than just eight persons to fill this need. Assuming, however, that only eight people will be hired, and adding those eight to last year's peak total of 49, 57 employees in all would be expected to work during the peak season. The UFW determined that 33 employees worked during the eligibility period and therefore would find the petition timely. I find only 28 workers worked during the eligibility period and the petition would therefore be untimely by one employee.

The theory which the UFW relies on to determine peak was suggested by the Investigative Hearing Examiner's Decision adopted by the Board in High and Mighty Farms, 3 ALRB No. 88 (1977), slip

opinion at 19. This theory compares the total number of employees eligible to vote to an average employee day during the peak period. I would adopt this theory as most accurately reflecting the intent of the Act and as the easiest to use when predicting prospective peak. This theory gives equal consideration to all employees who work during the eligibility period, when determining whether the number of employees during the eligibility period reflect 50 percent of peak employment. Cal. Lab. Code §1156 states that "the number of agricultural employees currently employed by the employer named in the petition as determined from his payroll immediately preceding the filing of the petition, is not less than 50 percent of his peak agricultural employment..." This language suggests that the total number of employees employed during the period should be compared to the peak statistic. The Act does not provide that this number should be averaged.

The result of averaging the eligibility period is to limit the number of elections to be held a year - even though a representative number of the employees may be on hand to vote. The argument can be made that where there is high turnover of employees an average will give a more representative picture of the employer's work force. However, in this case, there is no turnover. The employer employs steady workers who do not all happen to work five days of the eligibility period. Attempting to find an average employee day during the eligibility period when there is a steady work force is incompatible with the intent of the Act which gives equal rights to all farm workers to vote regardless of how many days they worked during the eligibility period.



It is also incompatible with the wording of the Act itself which states the number of workers should be compared to peak employment.

I do find it reasonable to average the number which will represent the employer's peak employment. Peak employment is an estimate of the number of agricultural employees needed by the employer to perform particular agricultural activities during the employer's busiest time of year. In Mario Saikhon, 2 ALRB No. 2 (1976), a strict body count was found to give an inaccurate picture of the employer's actual labor needs during peak season when there is a high turnover. For example, 500 people may be hired to do a job which demands only 100 job positions per day. Using an average number of employee days will reflect the number of job slots needed to perform the work regardless of high or low turnover. The figure arrived at will be more stable and predictable. Additionally, where future peak is to be predicted, estimating the employer's labor requirement in terms of positions will be easier than predicting the actual number of people the employer will hire.

Applying the above described theory in the present case will give the following results. A total of 28 workers worked during the peak period. The peak employment figure for the 1977 peak week was 39; adding eight job slots to this number, the prospective peak employment would be 47. Twenty-eight is more than 50 percent of 47, therefore I find the petition to be timely filed.

Based on the failure of the employer to show that the Board agent abused his or her discretion in determining that the

number of employees employed during the eligibility period was at least 50 percent of the employer's expected peak, employment, I recommend that the employer's objection be dismissed and that the UFW be certified as the exclusive bargaining representative of all the agricultural employees of the employer in the State of California.

DATED: July 18, 1978

Respectfully submitted.

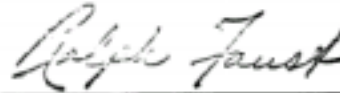
  
SUSAN MATCHAM URBANEJO  
Investigative Hearing Officer

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: )  
 )  
HOLTVILLE FARMS, INC., ) Case No. 78-RC-2-E  
 )  
Employer, ) ERRATUM  
 )  
and )  
 )  
UNITED FARM WORKERS )  
 )  
OF AMERICA, AFL-CIO, )  
 )  
Petitioner. )  
\_\_\_\_\_ )

The Investigative Hearing Examiner's Decision,  
page 12 , line 4 has been corrected to read as follows :  
"...persons fanned 1550 acres during the 1977 peak week.<sup>6/</sup>  
This averages ..."

DATED: August 15, 1978



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RALPH FAUST  
Executive Secretary, ALRB