

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

TRANSPLANT NURSERY, INC.,)	
Employer,)	Case No. 79-RC-4-OX
)	
and)	
)	
UNITED FARM WORKERS OF)	5 ALRB No. 49
AMERICA, AFL-CIO,)	
)	
Petitioner.)	
)	

DECISION ON CHALLENGED BALLOTS

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 United Farm Workers of America, AFL-CIO (UFW) , a representation election was conducted on May 1, 1979, among the agricultural employees of Transplant Nursery, Inc. (Employer) . The Tally of Ballots furnished to the parties at that time showed the following results:

UFW	35
No Union	25
Challenged Ballots	<u>28</u>
Total	88
Void Ballots	0

As the challenged ballots were sufficient in number to determine the outcome of the election, the Regional Director conducted an investigation and issued a Report on Challenged Ballots on May 22, 1979.

Three voters were challenged as having supervisory status. The Regional Director recommended that two of these challenges be overruled and that the other be sustained. As no exceptions were taken to these recommendations, we adopt the Regional Director's recommendations and hereby order that the ballots of the two employees listed in Schedule A (attached) be opened and counted and that the ballot of the voter listed in Schedule B (attached) not be opened or counted.

The Regional Director also recommended that the challenges to the ballots of the female packing-shed employees be overruled and that the resolution of the challenges to the ballots of the male packing-shed employees be deferred pending further investigation, in the event they prove to be outcome-determinative following the preparation and issuance of a Revised Tally of Ballots. The Employer timely filed an exception to the Regional Director's recommendation concerning the female packing-shed employees. Having considered the full record before us, we have concluded, for the reasons set forth below, that the packing shed functions in a manner incident to and in conjunction with the Employer's horticultural operations, and that all of the packing-shed workers are agricultural employees within the meaning of Labor Code Section 1140.4 (b) and are therefore eligible to vote in the election.

An agricultural employer's packing shed may be a commercial enterprise beyond our jurisdiction if it packs the agricultural commodities of other growers in addition to its own. Carl Joseph Maggio, Inc., 2 ALRB No. 9 (1976); The Garin Company,

148 NLRB 1499, 57 LRRM 1175 (1964); 29 C.P.R. Section 708.209.^{1/} Such sheds provide a commercial service to other growers and, therefore, the work is not incident to and in conjunction with the grower's own agricultural operation. However, where an agricultural grower, on an ad hoc basis, must purchase plants from another grower or nursery solely to meet its pre-existing contract obligations because, for some reason, there is an insufficient supply of plants from its own fields or greenhouses, no commercial packing service is being provided and the inherent agricultural nature of the operation remains. Wirtz v. Jackson & Perkins Co., 312 P.2d 48 (2nd Cir. 1963); Walling v. Rocklin, 132 F.2d 3 (8th Cir. 1942). See also Employer Members of Grower-Shipper Vegetable Assn., 230 NLRB 1011, 96 LRRM 1054 (1977).

In this case, the Employer operates a nursery engaged in the production and sale of flowers and plants. The plants are grown in the Employer's greenhouses and packed in the Employer's shed, adjacent to the greenhouses. The packing-shed employees are divided into two groups. The women work primarily in the greenhouses sleeving plants, the first step in the packing process. At times they also engage in other greenhouse activities, such as cutting plants or irrigating. The men work primarily in the shed itself where they haul plants and complete the packing process. When large orders must be filled, the women are sent into the shed

^{1/} In determining whether the shed workers are agricultural employees, we look to the precedents of the National Labor Relations Board, the courts, and the U.S. Department of Labor. McFarland Rose Production, 2 ALRB No. 44 (1976); Mr. Artichoke, Inc., 2 ALRB NO. 5 (1976).

to help.

Orders from customers are often received months in advance of the delivery date. Occasionally, the Employer is unable to fill a customer's order from its own greenhouses and, in such circumstances, it purchases the needed plants from other nurseries to add to its own products or to substitute in order to meet its obligations. Between June 1, 1978, and March 31, 1979, 22 percent of the Employer's sales volume consisted of plants obtained in this manner. When such plants are delivered to the Employer's shed, they are unloaded, inspected, recased if necessary, and then immediately shipped to the Employer's customer. They usually remain no more than one day at the Employer's premises. The female packing shed employees rarely handle plants procured from other nurseries.

As heretofore stated, we conclude that the Employer's packing shed is an agricultural enterprise and that, therefore, the shed workers are agricultural employees within the meaning of Labor Code Section 1140.4 (b). The Employer provides no packing services for other growers nor does it act as a broker for other growers. The Employer's only contact with plants produced by other growers involves purchases made to meet its own contract obligations. Therefore, the work done in the packing shed is clearly incident to and in conjunction with the Employer's nursery operation. Accordingly, we hereby overrule the challenges to the ballots of the 25 packing-shed employees listed in Schedule C (attached), and

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we order that their ballots be opened and counted, and that the Regional Director prepare and issue a Revised Tally of Ballots.

Dated: July 27, 1979

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

SCHEDULE A

CHALLENGE OVERRULED -- NO EXCEPTIONS

BALLOTS TO BE OPENED AND COUNTED

1. Maximo Alonzo
2. Ruben Martinez

SCHEDULE B

CHALLENGE SUSTAINED -- NO EXCEPTION

BALLOT NOT TO BE OPENED OR COUNTED

1. Aida Alonzo

SCHEDULE C

CHALLENGES OVERRULED PER OPINION

BALLOTS TO BE OPENED AND COUNTED

- | | |
|----------------------|----------------------|
| 1. Dulce Alonzo | 14. Martha B. Mora |
| 2. Alicia Avina | 15. Maria Morales |
| 3. Alejandro Ayala | 16. David Morris |
| 4. Maria Ayala | 17. Graciela Murillo |
| 5. Maria M. Ayala | 18. Jose Nieves, Sr. |
| 6. Octavio Ayala | 19. Silvia Nieves |
| 7. Justina Corona | 20. Jesus Perez |
| 8. Maria E. Gomez | 21. Luis Pintor |
| 9. Petra G. Gomez | 22. Armando Ramirez |
| 10. Angela Heredia | 23. Ruben Ruiz |
| 11. Sylvia Ipatzi | 24. Gloria Sanchez |
| 12. Tom McCormick | 25. Maria Zamora |
| 13. Alicia Manriquez | |

CASE SUMMARY

Transplant Nursery, Inc. (UFW)

5 ALRB No. 49

Case No. 79-RC-4-OX

REGIONAL DIRECTOR'S REPORT

After a representation election conducted on May 1, 1979, the Regional Director issued a report on challenged ballots on May 22, 1979. He recommended that the Board sustain the challenge to one ballot because the voter was a supervisor and overrule the challenges to two other ballots because the voters were not supervisors. The Regional Director recommended that the Board overrule the challenges to the ballots of the female packing-shed employees because they generally worked only on the Employer's products rather than on plants purchased from other nurseries. He also recommended that the challenges to the ballots of the male packing-shed employees be held pending further investigation.

BOARD DECISION

The Board adopted the Regional Director's recommendations, in the absence of exceptions thereto, as to the three ballots challenged on the grounds that the voters were supervisors. The Board decided that the packing shed was an agricultural operation operated incident to and in conjunction with the Employer's nursery, notwithstanding the fact that 22 percent of the Employer's sales consisted of plants purchased from other nurseries. The Board held that where, as here, an employer purchases plants from other nurseries solely to supplement its own supply in order to meet pre-existing contract obligations, its operation is not thereby rendered a commercial enterprise. The Board therefore overruled the challenges to the ballots of all 25 packing-shed employees, and ordered the Regional Director to open and count all 27 ballots as to which challenges were overruled, and to issue a Revised Tally of Ballots.

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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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