

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

OSHITA, INC.,)	
Employer,)	Case No. 78-UC-9-M
)	(78-RC-9-M)
and)	
)	5 ALRB No. 69
UNITED FARM WORKERS)	
OF AMERICA, AFL-CIO,)	
)	
Petitioner.)	

DECISION AND ORDER OF CLARIFICATION

On August 2, 1978, the United Farm Workers of America, AFL-CIO (UFW), was certified as the collective bargaining representative of all the agricultural employees of Oshita, Inc. (Employer). At the election, the ballots of 81 onion-bunching-shed workers were challenged by the Employer, on the basis of-its contention that they are not agricultural employees. As the ballots of these workers were not sufficient in number to have affected the results of the election, their status did not become the subject of a post-election investigation of challenged ballots. The UFW now seeks, by way of its unit-clarification petition, a determination by the Board as to whether the onion-shed workers are agricultural employees within the meaning of Labor Code Section 1140. 4 (b) and thus included within the certified unit of "all agricultural employees of

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the Employer".^{1/}

Pursuant to 8 Cal. Admin. Code Section 20385 (c), the Board's Regional Director conducted an investigation of the issues raised by the UFW's petition and issued a report in which he recommended that the Board find the onion-shed workers to be agricultural employees. The Employer excepts to the recommendation of the Regional Director.^{2/}

^{1/} The Board's express authority under Labor Code Section 1156.3(c) and (d) to issue certifications carries with it the implied authority to police such certifications and to clarify them as a means of effectuating the policies of the Act. Thus, 8 Cal. Admin. Code Section 20385(a) provides:

A petition seeking clarification of an existing bargaining unit in order to resolve questions of unit composition which were left unresolved at the time of certification or were raised by changed circumstances since certification may be filed by a labor organization or by an employer where no question concerning representation exists.

. . . .

A unit-clarification proceeding and an order of clarification are clearly appropriate for determining issues of employee status left unresolved at the time of certification. The Western Colorado Power Company, 190 NLRB 564 (1971).

^{2/} The Employer relies in part on a decision of a Regional Director of the National Labor Relations Board, holding that these same workers are not agricultural laborers subject to the Section 2(d) agricultural exemption under the NLRA. Oshita, Inc., NLRB Case No. 32-RM-68. A request for review of that decision, filed by the UFW, was never considered by the NLRB, due to withdrawal of the underlying representation petition. Where the NLRB has denied a request for review of a Regional Director's decision, the denial constitutes affirmance of that decision. NLRB Rules & Regulations, Section 102.67(f). In this case, the UFW filed such a request, but it was precluded from obtaining a final determination from the NLRB through the appeal procedure. In such circumstances, the Regional Director's decision does not bar a determination by this Board of the onion-shed workers' status. We note that the onion-shed workers have never participated in an election conducted under the auspices of the NLRB. The Employer also contends that these workers are expressly excluded from the

[fn. 2 cont. on p. 3]

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.

The Board has reviewed the record and the report and findings of the Regional Director in light of the Employer's exceptions and brief and has decided to affirm his conclusions that the onion-shed workers are agricultural employees, as they are employed in a facility on the Employer's farm where they are engaged exclusively in the bunching of green onions grown by the Employer either on its own land or on land owned by other persons.

Section 2(3) of the National Labor Relations Act (NLRA) excludes from its coverage any individual employed as an agricultural laborer, but the NLRA does not define agriculture or agricultural laborer. However, since July 1946 the congressional appropriation acts for the NLRB have included a rider which in effect directs the NLRB to follow the definition of agriculture set forth in Section 3(f) of the Fair Labor Standards Act (FLSA), 29 U.S.C.A. Section 203 (f), in determining whether an employee is an agricultural laborer within the meaning of Section 2(3) of the NLRA. ALRA Section 1140.4(b) limits the term agricultural employee to employees excluded from coverage of the NLRA pursuant to Section 2(3) thereof and Section 3(f) of the FLSA.

[fn. 2 cont.]

scope of our existing certification order by language therein which excludes workers employed in off-the-farm packing sheds or vacuum coolers. However, the shed in issue is located on the Employer's farm near Gonzales, a fact conceded by the Employer in its written declaration to the Regional Director, said declaration being a part of the record herein.

The definition of agriculture in the FLSA includes farming in all its branches, and also other activities, whether or not they would ordinarily be regarded as farming practices, provided they are performed by a farmer or on a farm as an incident to, or in conjunction with, such farming operations.^{3/}

In written responses to questions posed by the Regional Director in the course of his investigation of the petition herein, the Employer declared that nearly 12 percent of the crop bunched in the onion shed is grown on Oshita-owned land near Gonzales (the farm on which the bunching shed is located) whereas the remaining 88 percent is grown by the Employer on property owned by other landowners under various contractual arrangements. Under each of these contracts, the Employer assumes ownership of the crop at the planting stage, after the individual landowner has performed preliminary soil preparation, and thereafter maintains total control over all subsequent phases of planting, cultivation, harvesting and preparation for market. According to the Employer, it does not perform bunching services for a fee for independent farmers.

Clearly, then, the Employer is substantially involved in

^{3/}This provision reads in pertinent part:

'Agriculture' includes farming in all its branches and ... includes the cultivation and tillage of the soil ... the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities ... and any practices ... performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

all of the growing and harvesting stages of the onions and thus is more than a mere purchaser of a mature crop. Moreover, the onion-bunching shed is not organized as a separate enterprise or activity. Rather, it is an essential adjunct to the Employer's entire agricultural function in that employees who work therein perform one of the incidental activities necessary to the growing and harvesting of onions by their Employer. See, Walling v.

Rocklin, 132 F. 2d 3 (8th Cir. 1942), ^{4/} wherein the court was confronted with the question of whether employees of a retail and wholesale floral shop who handled horticultural commodities grown by the employer qualified for the agricultural exemption under the FLSA. In upholding the exemption, the court observed that the raw products were being prepared for market in connection with the business of producing them and thus such work was "done [as] 'an incident to' or 'in conjunction with' the agricultural enterprise which is being carried on ...". On this basis, we conclude that the onion-shed employees are agricultural employees in that they perform practices for a farmer, in this instance the Employer herein, as an incident to or in conjunction with its farming

^{4/} This case deals specifically with the interpretation of Section 3(f) of the Fair Labor Standards Act but was decided prior to the congressional appropriations rider for the National Labor Relations Board for fiscal year 1946-1947. The rider expressly sets forth that "agricultural laborers" as referred to in Section 2(3) of the National Labor Relations Act are to be "as defined in Section 3(f) of the Act of July 25, 1938 (52 Stat. 1060)," which is known as the Fair Labor Standards Act. We observe that Walling v. Rocklin, has been cited as authority for the definition of "agricultural laborers" in at least two cases decided by the NLRB after 1946. See, Rod McLellan Co., 172 NLRB 1458, fn. 22, 1460, 68 LRRM 1546 (1968); Hershey Estates, 112 NLRB 1300, fn. 3, 1302, 36 LRRM 1196 (1955).

operations. Farmer's Reservoir & Irrigation Co. v. MeComb, 337 U.S. 755 (1949).

Having determined that the onion-shed workers are agricultural employees within the meaning of Labor Code Section 1140.4(b), we shall clarify our prior certification to include them in the certified collective-bargaining unit.

ORDER

It is hereby ordered that the unit of all agricultural employees of Oshita, Inc., represented by the United Farm Workers of America, AFL-CIO, be, and it hereby is, clarified by including therein the onion-bunching-shed employees of Oshita, Inc.

Dated: November 30, 1979

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

CASE SUMMARY

Oshita, Inc. (UFW)

5 ALRB No. 69

Case No. 78-UC-9-M

The Board's certification of the UFW as the exclusive bargaining representative of all the agricultural employees of the Employer left open the question of whether the existing unit would include the 81 onion-bunching-shed workers whose eligibility to vote in the election had been challenged by the Employer on the grounds that they are not agricultural employees. As the challenged ballots were not sufficient in number to have affected the outcome of the election, they were not the subject of a post-election investigation of challenged ballots. Subsequently the union filed a petition for clarification of bargaining unit in order to seek Board resolution of the status of the onion-shed workers. The Salinas Regional Director thereafter conducted an investigation pursuant to 8 Cal. Admin. Code Section 20385 (c) (unit clarification proceedings). His finding that the bunching shed workers are agricultural employees and therefore included within the certified unit was excepted to by the Employer.

The Board concluded that the onion-shed workers are agricultural employees as they are employed in a facility on the Employer's farm where they are engaged exclusively in the bunching of green onions which are grown by the Employer, either on its own land or on land owned by other persons. The Board reasoned that the Employer was the farmer as to all crops grown, regardless of the ownership of the particular parcels of land, as the Employer maintained total control of all operations from planting through preparation for market and thus was more than a mere purchaser of a mature crop.

ORDER

The Board clarified the unit of agricultural employees of the Employer represented by the UFW to include workers employed in the Employer's onion-bunching 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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