

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

SUTTI FARMS, ^{1/})	
)	
Employer,)	Case No. 79-RC-6-OX(SM)
)	
and)	6 ALRB No. 11
)	
INTERNATIONAL UNION OF)	
AGRICULTURAL WORKERS,)	
)	
Petitioner.)	

DECISION AND ORDER

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.

On July 16, 1979, the International Union of Agricultural Workers (IUAW) filed a petition for certification as the collective bargaining representative of the agricultural employees of Flying S" Cattle Company in San Luis Obispo and Santa Barbara Counties. The Regional Director issued a notice and direction of election in which the Employer was designated as "Sutti Farms, Sutti Dairy, Flying S." In a representation election conducted on July 23, 1979, a total of 62 ballots were cast ^{2/} and all were

^{1/}This case was originally captioned "Flying 'S' Cattle Company". It was determined by the Acting Regional Director that the petition for certification also sought an election among the employees of Sutti Farms. The responding employer throughout these proceedings has been Sutti Farms, and no exception was made to the finding of the Acting Regional Director that the appropriate bargaining unit consisted of Sutti Farms employees.

^{2/}Ninety-three names appeared on the eligibility list.

challenged except those cast by the direct employees of Sutti Farms. The ballots cast by employees of Sutti Farms, Sutti Dairy, Flying "S", and by members of Felipe Zepeda's crew were segregated and identified, but none were tallied.

As the challenged ballots were sufficient in number to determine the outcome of the election, the Acting Regional Director conducted an investigation and issued a report on challenged ballots on October 16, 1979.

Exceptions to the Acting Regional Director's report and a brief in support of those exceptions were timely filed by the Employer. Petitioner filed no exceptions or brief. The Board has considered the record ^{3/} herein, the report of the Acting Regional Director, and the exceptions and brief of the Employer, and has decided to affirm the Acting Regional Director's findings ^{4/} and conclusions and to adopt her recommendations, as modified herein.

The Acting Regional Director found in effect that the appropriate unit herein consists of the agricultural employees employed directly by Sutti Farms, plus the agricultural workers supplied by its labor contractor, Felipe Zepeda. As there was no

^{3/} ALRB Regulations Section 20363 (c) provides that in challenged ballot cases involving exceptions to the Regional Director's report, the record on review by the Board shall consist of the petition for certification, the notice and direction of election, the tally of ballots, the Regional Director's report on challenged ballots, and the exceptions thereto, along with supporting evidence and briefs.

^{4/} We disavow the categorical statement on page 4 of the Acting Regional Director's report to the effect that orderly bargaining operations would not be possible in a unit composed of employees of operations as functionally unrelated as those of Flying "S", Sutti Dairy and Sutti Farms.

exception to the Acting Regional Director's implicit finding that the appropriate unit excluded the employees of Flying "S" and Sutti Dairy, we affirm that finding and hereby sustain the challenges to the ballots of the employees of Flying "S" and Sutti Dairy.

Sutti Farms contends that the appropriate unit should exclude the employees of Felipe Zepeda, who was engaged by Sutti for the hoeing and thinning of broccoli, cauliflower and lettuce, and the harvesting of broccoli and cauliflower. The Acting Regional Director found Zepeda to be a labor contractor, thereby excluding him from employer status under the terms of Section 1140.4(c). The ballots cast by members of Zepeda's crew would thus be valid and counted, along with those of workers who were directly employed by Sutti, to determine the outcome of the election.

In his declaration attached to the Employer's exceptions, Emilio Sutti, an owner of Sutti Farms, states, "Zepeda has exclusive control over his entire workforce and no one at Sutti Farms is involved in the hiring, firing, disciplining or setting of wages or compensation for any of Zepeda's employees." The declaration further indicates that Zepeda receives a flat per acre, per pound, or per carton fee to cover the cost of the labor he provides, plus a 30 percent surcharge as payment for his services. In addition to providing the labor, Zepeda arranges for the transportation of produce from the field to the various packing sheds and freezers. However, he does not own any of the transportation equipment and is not involved in the billing

process for that equipment. Sutti stated that he "depend[s] very heavily upon Mr. Zepeda's advice concerning when it is appropriate to thin and hoe our produce as well as harvest it", and that such advice is "taken into account" when determining Zepeda's per acre fee. However, the Acting Regional Director found that Zepeda is not specifically paid for his judgment, and that Sutti has the final say in any matter regarding the growing, cultivation and harvesting of the crops. ^{5/}

Taking the facts as related in Sutti's own declaration, we find that Felipe Zepeda's role at Sutti Farms does not manifest the requisite indicia of a custom harvesting operation. In previous cases requiring the Board to decide whether a particular business entity should be considered a labor contractor or a custom harvester, we have not looked to any single factor but rather to the whole activity of the entity whose status is in question. Joe Maggio, Inc., 5 ALRB No. 26 (1979). However, in all such cases one or both of the following conditions has been considered essential to custom harvester status: the providing of specialized equipment and the exercise of managerial judgment in

^{5/}There is a conflict in the evidence as to who bears the risk once the produce is harvested. According to the Acting Regional Director, Zepeda says that "no matter what happens, I get paid a certain percent over what the workers get, whether the commodity is accepted or not" and that "the grower takes the risk of rejected produce." Sutti states that, "If for some reason the produce which is harvested does not make it to the freezer or packing shed, Zepeda will not be compensated for that harvest even though he will still be obligated to pay his employees." Since Zepeda is compensated on a per pound or per unit basis for harvesting and only properly cleaned produce is accepted by the freezer, it would appear that Zepeda may bear a production risk at least to that extent. However, given other factors discussed infra, Zepeda's production risk is of minor importance.

the cultivation or harvesting of crops. See, e.g., Kotchevar Brothers, 2 ALRB No. 45 (1976); Jack Stowells, Jr., 3 ALRB No. 93 (1977); The Garin Company, 5 ALRB No. 4 (1979).

Sutti contends that in Jack Stowells, supra, a finding of custom harvester status was based on facts almost identical to those of the instant case. However, closer examination of the two cases shows that, unlike Zepeda, Stowells was actually paid for the exercise of his managerial judgment and did in fact make all managerial decisions in the absence of the particular landowner. In addition, Stowells himself provided at least part of the specialized equipment that was required in the cultivation of his clients' citrus crops. Zepeda, on the other hand, does not own or otherwise control any of the equipment that is required in connection with the services he provides to Sutti Farms.

In arguing that Zepeda does more than merely provide labor, Sutti emphasizes that Zepeda has complete control over his work force and the labor relations policies pertaining thereto. However, this autonomy concerns the internal operations of Zepeda's crew; the record indicates that the managerial decisions regarding deployment and utilization of the crew are made by Sutti.

Given that Zepeda lacks both of the key indicia of a custom harvester and in actuality does little more than provide labor, we conclude that Sutti, rather than Zepeda, is the employer of the crew in question. As the members of Felipe Zepeda's crew were correctly included as employees of Sutti Farms, we hereby order the Regional Director to open and count their ballots along

with those of Sutti Farms' direct employees, and to prepare and issue a tally of ballots.

Dated: February 19, 1980

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

CASE SUMMARY

Sutti Farms (IUAW)

6 ALRB No. 11
Case No. 79-RC-6-OX(SM)

REGIONAL DIRECTOR'S DECISION

A petition for certification was filed by the International Union of Agricultural Workers in which Flying "S" Cattle Company (feed lot) was named as the employer. The petition was construed by the Regional Director to also include the employees of Sutti Farms and Sutti Dairy. After an election in which challenged ballots were sufficient in number to be determinative, the Acting Regional Director issued a report finding that the appropriate unit consisted of the agricultural employees employed directly by Sutti Farms, plus the agricultural workers supplied to Sutti Farms by Felipe Zepeda. The Acting Regional Director found Zepeda to be a labor contractor. As such Zepeda would be excluded from employer status under Labor Code Section 1140.4(c). The employees of Sutti Dairy and Flying "S" were not included in the unit of employees of Sutti Farms because the dairy and the feed lot were found to be functionally separate from and unrelated to Sutti Farms.

BOARD DECISION

As there was no exception to the Acting Regional Director's implicit finding that the appropriate unit excluded the employees of Flying "S" and Sutti Dairy, the Board affirmed that finding and sustained the challenges to the ballots of the Flying "S" and Sutti Dairy employees.

The Board found that since Zepeda neither provided specialized equipment nor exercised managerial judgment, he did not manifest the requisite indicia of a custom harvesting operation. As the members of Zepeda's crew were correctly included as employees of Sutti Farms, the Board ordered that the Regional Director open and count their ballots along with those of Sutti Farms' direct employees, and thereafter prepare and issue a 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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