STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

CROWN POINT ARABIANS, Employer, and INDEPENDENT UNION OF AGRICULTURAL WORKERS, Petitioner.	)	Case No. 79-RC-12-OX (SM) 6 ALRB No. 59

DECISION ON CHALLENGED BALLOTS

Following a petition for certification filed by the Independent Union of Agricultural Workers (IUAW), a representation election was conducted on September 4, 1979, among the agricultural employees of Crown Point Arabians (Employer).

Each of the 10 employees[1/] who voted in the election was challenged by the Employer on the basis that he or she is not an agricultural employee within the meaning of Labor Code section 1140.4(b). Three of the voters were also challenged by the IUAW, two on the grounds that they are supervisors and one on the basis of an alleged confidential employee status.

As the challenged ballots were sufficient in number to determine the outcome of the election, the Regional Director conducted an investigation and, on January 29, 1980, issued a report on challenged ballots. The Employer timely filed exceptions to portions of that report, with a brief in support of its exceptions.

[1/]Eleven names appear on the challenged ballot roster due to the duplicate listing of the name R. D. Harold.

The Board has considered the report on challenged ballots in light of the Employer's exceptions and brief and has decided to affirm the Regional Director's findings, conclusions,[2/] and recommendations, as modified herein.

We reject the Employer's contention that the Regional Director erred in concluding that its employees are agricultural employees within the meaning of Labor Code section 1140.4(b).

The facts are not in dispute. The Employer operates a stud farm at Santa Ynez where it breeds Arabian horses as a service for its customers. The Employer has acquired, and maintains, a stable of Arabian stallions and provides, as a necessary adjunct to its breeding service, temporary stabling for its customers' mares. The Employer has developed special use buildings, grounds, and arenas at its Rancho Del Rio facility, where it trains and boards horses, shows stallions for prospective customers, and markets horses consigned to it for sale by their owners.

The Regional Director found that about 30 percent of the 75 adult horses boarded on the farm during September of 1979 were owned by the Employer's customers. The Employer confirms this fact and explains further that 30 percent of its present revenues are derived from breeding, training, and boarding Arabian horses.

In defining the term "agricultural employee", section 1140.4(b) of the Agricultural Labor Relations Act (ALRA) limits the

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[2/]As no party has excepted to the Regional Director's conclusion that Thomas Hutchinson and Chris Muncie are not supervisors within the meaning of Labor Code section 1140.4(j), and as we find herein that they are agricultural employees, we adopt his recommendations that the challenges to their ballots be, and they hereby are, overruled.

application of that term to employees excluded from coverage of the National Labor Relations Act (NLRA), as amended, as agricultural employees pursuant to section 2(3) of the NLRA, 29 U.S.C. section 152(3), and section 3(f) of the Fair Labor Standards Act (FLSA), 29 U.S.C. section 203(f).[3/]

Section 1140.4(a) of the ALRA defines "agriculture", in accordance with section 3(f) of the FLSA, as follows:

> The term 'agriculture' includes farming in all its branches, and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 1141j(g) of Title 12 of the United States Code), the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market.

This definition of agriculture consists of two distinct meanings. Within the primary meaning are certain specific and actual farming operations, including the raising of livestock. The secondary meaning covers other practices, whether or not they would ordinarily be regarded as farming practices, provided the same are performed by a farmer or on a farm as an incident to, or in conjunction with, such (primary) farming operations. See Farmers Reservoir and Irrigation Co. v. McComb (1949) 337 U.S. 755; Bayside

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[3/]Individuals employed as "agricultural laborers" are specifically excluded from coverage of the NLRA. The NLRA, however, does not define the term "agricultural laborer". Since 1947, Congress has attached riders to the annual appropriations measure for the NLRB which, in effect, make the definition of agriculture in section 3(f) of the FLSA applicable in determining who is an "agricultural laborer" under section 2(3) of the NLRA.

Enterprises, Inc. v. NLRB (1977) 429 U.S. 298.

U.S. Department of Labor regulations construing section 3(f) of the FLSA specifically include the "raising of livestock" within the primary meaning of agriculture. Furthermore, "raising of livestock" expressly covers such operations as the breeding, fattening, feeding and general care of domestic animals, such as horses, ordinarily raised on farms. 29 C.F.R. sections 780.120, 780.121, 780.616.

It is undisputed that the day-to-day activities of the employees herein include the feeding, grooming, exercising, and training of all horses stabled on the Employer's premises.[4/] The employees are also required to perform certain tasks incidental to the general care of the animals such as the cleaning of horse stalls and maintenance of the facilities. Moreover, according to the Employer, all of these tasks are performed on its farm. We find on

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[4/]It is immaterial that not all of the horses stabled and cared for on the Employer's premises are the products of its own farm, as the agricultural exemption is dependent upon the nature of the activities of the employees rather than those of the employer. Mitchell v. Stinson (1st Cir. 1954) 217 F.2d 210; 29 C.F.R. sections 780.403 et seq. Thus, an employee may be employed in agriculture within the meaning of the agricultural exemption even though the employer is a commercial operation. Wyatt v. Holtville Alfalfa Mills, Inc. (D.C. Cal. 1952) 106 F.Supp. 624, remanded on other grounds (9th Cir. 1955) 230 F.2d 398. In the circumstances of this case, it is also immaterial that certain employees are assigned to perform general landscape and gardening tasks. The secondary meaning of "agriculture" includes any practices, whether or not they are themselves farming practices, which are performed either by a farmer or on a farm as an incident to or in conjunction with farming operations. Farmer's Reservoir and Irrigation Co. (1949) 337 U.S. 755. The mowing of lawns, for example, is not agriculture unless the practice is performed incidental to the farming operations. Here, maintenance of the Employer's grounds is performed as an incident to or in conjunction with its raising, breeding, and general care of horses and thus is "agriculture" within the secondary meaning of that term. 29 C.F.R. section 780.205(c).

this basis that the Employer's employees are engaged in purely agricultural tasks, specifically the "raising of livestock" as that term is defined in 29 C.F.R. sections 780.119, 780.120, 780.121, and 780.616, and thus the primary definition of "agriculture" clearly is satisfied.

The Employer observes correctly that certain cases hold that the term "raising of livestock" normally would not include the feeding and care of a constantly changing group of animals. NLRB v. Tovrea Packing Co. (9th Cir. 1940) 111 F.2d 629 [6 LRRM 996] cert. den. (1940) 311 U.S. 668 [7 LRRM 326]; Walling v. Friend (8th Cir. 1946) 156 F.2d 429. See also 29 C.F.R. section 780.121.[5/] However, these cases pertain to animals held in stockyard pens or in the corrals of meat packing plants pending slaughter or shipment for slaughter and are inapplicable to the instant matter as the Employer is not engaged in merely holding livestock in a feed lot operation, nor in stock feeding and conditioning as an incident to a meat packing facility or stock ranch.

Similarly misplaced is the Employer's reliance on Hodgson v. Elk Garden Corp. (4th Cir. 1973) 482 F.2d 529, to establish that its employees are not subject to the agricultural exemption under the FLSA since they are not engaged in the range production of livestock. An employee whose primary duty is the range production of livestock, and whose constant attention is required on the range,

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[5/]A different result attaches if the feeding and general care of the livestock in a feed lot is performed either for a substantial period of time or as an incident to or in conjunction with a farming operation. See Swift & Co. (1953) 104 NLRB 922 [32 LRRM 1159], a case relied upon by the Regional Director but which we find inapplicable because of the dissimilarity of Crown Point's operation.

is exempt only from the overtime pay and minimum wage provisions of FLSA section 13(a)(6)(e) not because he or she is not engaged in agriculture but rather because the computation of hours worked under such circumstances is not feasible. Hodgson v. Elk Garden Corp., supra; 29 C.F.R. section 780.329. The Labor Department has ruled specifically that the range production of livestock normally is agricultural work. 29 C.F.R. section 780.324.

The Employer separately excepts to the Regional Director's recommendation that the challenge to the ballot of Lucinda Bosshardt be sustained. Ms. Bosshardt had been challenged by the IUAW at the time of the election on the grounds that she is a confidential employee within the meaning of 8 Cal. Admin. Code section 20355(a)(6). In his report on challenged ballots, the Regional Director concluded that Ms. Bosshardt is not a confidential employee but recommended that the challenge to her ballot be sustained on the basis of 8 Cal. Admin. Code section 20355(a)(3).[6/] That section provides for a challenge to the eligibility of a prospective voter who is "employed by his or her parent, child, or spouse, or is the parent, child or spouse of a substantial stockholder in a closely-held corporation which is the employer".[7/] The Regional Director found that since Ms. Bosshardt is the stepdaughter of Ken Johnson, the "owner" of Crown Point Arabians, she is closely aligned to management and thereby

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[6/]We reject the Employer's contention that the Regional Director's investigation as to a challenged ballot must be confined to the grounds asserted for the challenge at the time of the election. Jack T. Baillie Company, Inc. (July 17, 1978) 4 ALRB No. 47.

[7/]See also 8 Cal. Admin. Code section 20352(b) which denies voting eligibility to persons having such filial or marital status.

enjoys a "special status" which would deprive her of bargaining unit status. However, the Regional Director also found that Crown Point is wholly owned by the Ynez Corporation which in turn is owned by Sentinel Publishing Company, thereby invoking the second part of 8 Cal. Admin. Code section 20355(a)(3); i.e., relationship to a substantial stockholder of a closely held corporation. As the Board has not heretofore had occasion to interpret and apply the pertinent provision,[8/] and as there is insufficient evidence on the record to make a determination, we shall not rule on the challenge to Ms. Bosshardt's ballot unless and until it proves to be outcome-determinative.

The Regional Director is hereby directed to open and count all of the challenged ballots except that of Ms. Bosshardt and thereafter to issue to "the parties a revised tally of ballots.

The Employer also timely filed objections to the election. On March 11, 1980, the Executive Secretary dismissed four of the objections which pertained to alleged election misconduct but deferred taking action on three additional objections which relate to the question of whether the employees are employed in agriculture. As our Decision herein is dispositive of that issue, we hereby dismiss the remaining objections.

Dated: October 27, 1980

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

[8/]Kern Valley Farms (Feb. 1, 1977) 3 ALRB No. 4 involved a challenge asserted on the basis of 8 Cal. Admin. Code section 20355(a)(3) but was decided on other grounds.

CASE SUMMARY

Crown Point Arabians (IUAW) 6 ALRB No. 59
Case No. 79-RC-12-OX (SM)

REGIONAL DIRECTOR'S REPORT

In a representation election conducted on September 4, 1979, all of the 10 voters were challenged by the Employer on the basis that they are not agricultural employees within the meaning of the Act, and three of the voters were also challenged by the IUAW on the grounds that two are supervisors and one is a confidential employee. After an investigation, the Regional Director issued a report on challenged ballots in which he concluded that all of the employees are engaged in agriculture, that the two alleged supervisors are rank-and-file employees eligible to vote, and that the last employee, while not a confidential employee, should be excluded from the bargaining unit as she is the stepdaughter of the Employer's owner and thus enjoys a "special status" because of her relationship to management.

BOARD DECISION

The Board upheld the Regional Director's conclusion as to the agricultural status of the employees without adopting his analysis. The Board found that the Employer operates a stud farm at Santa Ynez where it maintains a stable of Arabian stallions and offers a breeding service to independent owners of mares. Employees' day-to-day activities include the breeding, boarding, training, feeding and general care of all horses stabled on the Employer's farm and thus are engaged in the "raising of livestock", a category of agricultural activity expressly set forth in Labor Code section 1140.4(a). Certain employees whose tasks relate to the maintenance of the Employer's grounds and facilities were also found to be engaged in agriculture. Such activity, the Board found, is carried on as an incident to or in conjunction with the Employer's primary farming operations.

The Board adopted the Regional Director's recommendations, in the absence of exceptions thereto, that the challenges to the two alleged supervisors be overruled. However, absent sufficient evidence on the record to do so, the Board deferred ruling on the Regional Director's recommendation that the third employee be excluded from the unit based on her relationship to the owner and/or manager of the Employer. The Regional Director was ordered to open and count the ballots of the nine remaining employees and to thereafter issue a revised tally of ballots to the parties.

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