

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

SAM H. HATAI, ^{1/})	
)	
Employer,)	Case No. 80-RC-43-SAL
)	
and)	
)	
UNITED FARM WORKERS)	8 ALRB No. 35
OF AMERICA, AFL-CIO,)	
)	
Petitioner.)	

DECISION AND CERTIFICATION OF REPRESENTATIVE

Following a Petition for Certification filed by the United Farm Workers of America, AFL-CIO (UFW) on August 15, 1980, a representation election was conducted on August 22 among the agricultural employees of Sam H. Hatai, the Employer. The official Tally of Ballots showed the following results:

UFW	36
No Union	0
Challenged Ballots	<u>0</u>
Total	36

The Employer timely filed post-election objections, of which a part of one was dismissed and the rest were set for hearing. The hearing was held before Investigative Hearing Examiner (IHE) Steven Nagano on April 2, 3, 6, and 7, 1981.

The issue set for hearing by the Executive Secretary

^{1/}This case heretofore named Sam H. Hatai and William L. Lane, Jr., as the Employer. The amended caption reflects our finding herein that Sam H. Hatai is the employer of the employees involved.

was whether the bargaining unit properly included the Employer's "regular" or non-garlic employees as well as the garlic-harvesting crew. To define the bargaining unit, a determination had to be made as to whether Sam H. Hatai or, as Hatai claimed, William L. Lane (Lane) was the employer of the garlic-harvesting crew. If it were determined that Hatai was the employer of that crew, a second issue would be presented: Whether Hatai was at 50% of his peak agricultural employment when the petition was filed, as required by Labor Code section 1156.4. If, however, Lane were determined to be the employer of the garlic-harvesting crew, an additional issue would arise: whether certification of the UFW would be foreclosed in view of the fact that Lane was never formally served with the certification petition. Both Hatai and Lane were notified of and participated fully in the hearing before the IHE.

In his Decision dated October 6, 1981, the IHE concluded that Hatai and Lane were joint employers and that only the employees engaged in their joint garlic operation were eligible to vote in the election. According to the IHE's analysis, the peak issue did not arise, since the garlic operation was the sum total of Hatai's and Lane's joint activities, and Hatai's other, non-garlic, workers should not have been included in the bargaining unit or allowed to vote in the election. In view of the unanimous 36 to 6 vote in favor of the Union, the IHE recommended certification of the UFW to represent the bargaining unit of garlic workers. He reasoned that even though Hatai's "regular" employees had been permitted to vote, a unanimous vote

indicated that all of the garlic workers who voted had voted for the Union, and therefore the Union would be certified to represent them.

The UFVI timely filed exceptions to the IHE's Decision and a brief in support of its exceptions. Neither Katai nor Lane filed exceptions nor replied to those of the UFW.

Pursuant to Labor Code section 1146, the Agricultural Labor Relations Board (ALRB or Board) has delegated its authority in this matter to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, conclusions, and recommendations of the IHE only to the extent that they are consistent herewith.

As we are finding Sam H. Katai to be the agricultural employer of all the garlic and non-garlic agricultural employees, we shall certify the UFW as the exclusive collective-bargaining agent for all of Hatai's agricultural employees.

Four days before the IHE's Decision was issued in the instant case, the Board issued its Decision in San Justo Farms (Oct. 2, 1981) 7 ALRB No. 29, a case which we find to be controlling herein. Following the principle set forth in San Justo, we find that, while both Hatai and Lane had a role in the garlic venture, Hatai had, and has, the most substantial relationship with the' garlic harvesters, and is therefore the primary agricultural employer.

Other factors considered in San Justo are also present here. Like San Justo Farms, Hatai was in possession of the land

on which the garlic was grown and was personally present daily during the harvest. Like Vessey, the other employing entity in San Justo, Lane acquired and was responsible for preparing and planting the garlic cloves and paid the harvest workers. As in San Justo, the net profits from the sale of the garlic were divided equally between Hatai and Lane.

In several ways the evidence for finding that Hatai is the employer of the garlic harvesters for purposes of collective bargaining is even stronger than it was for San Justo, Whereas Vessey provided equipment and some supervisory control over the garlic harvest, Lane's only role, apart from selecting and arranging for preparation and planting of the seed, was to market the harvested garlic; all other aspects of the agricultural operation were controlled by Hatai and his labor contractor. Hatai is an experienced farmer who has raised vegetables for 30 years, and has planted garlic on and off for 10 to 12 years. Lane, on the other hand, employed as general manager of J. Gubser, one of the largest local garlic producers, is not a farmer and possesses neither equipment nor land. Since the early 1960's he has contracted from time to time with local farmers to raise garlic on small plots of their land. His business relationship with Hatai began in the mid-sixties, lasted 4-5 years, and was discontinued until 1978. During the period from 1978 to 1980, the year of the instant election, Hatai and Lane resumed their garlic operations, with Lane continuing to function in the manner of a speculator and as a

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business liaison with J. Gubser.^{2/} Due to losses experienced in the 1980 garlic crop, occasioned by the hot weather and garlic strike, Hatai and Lane terminated their business relationship after the 1980 harvest and, as of the date of the investigative hearing in April of 1981, they were no longer growing garlic together. Considering the erratic nature of Hatai and Lane's business relationship, a finding that they are, jointly, the employer of the unit employees would not effectuate the Act's purpose of furthering stable collective bargaining relationships.

The 1980 garlic harvest was accomplished, as in previous years, by the crew of labor contractor Jesus Quintero. Hatai engaged the services of Quintero, and Lane paid Quintero after the garlic harvest. Quintero also regularly supplied Hatai with workers each spring to hoe his sugar beets. Some of Quintero's garlic-crew members had worked for Hatai in other years and in other crops, sometimes as members of the Quintero crew, sometimes as directly-paid employees of Hatai. The record shows that Hatai's employees sometimes worked in both the sugar beet and garlic fields in the same day. Although Hatai's relationship with the individual garlic harvesters is less extensive than was San Justo's, his relationship with their contractor, Quintero, is stable and continuing. Inasmuch as Lane has no substantial relationship with the garlic harvesters, it is clear that Hatai alone is the agricultural employer of the

^{2/} As Lane testified, "Some years I contracted the total crop back. Some years I guaranteed a set price. And some years we speculated with the garlic." (RT, p. 32:20-22.)

garlic workers as well as the employer of the non-garlic agricultural employees, and we so find. See also W. G. Pack, Jr. (Apr. 16, 1982) 8 ALRB No. 30.

Our finding that Hatai is the employer of the garlic harvesting crew requires a further determination, as to whether Hatai was at 50% of his peak agricultural employment at the time of the filing of the petition for certification.

We approve the Regional Director's decision to invoke the peak presumption in this case pursuant to Board Regulation section 20310 (e) (1) (b), as we find that action was justified by Hatai's failure to present the Board agent with a complete employee eligibility list in accordance with Board Regulation section 20310(a). Cardinal Distributing Co. (Mar. 11, 1977) 3 ALRB No. 23. Even absent the presumption, we would find, on the basis of the following facts, that Sam Hatai was actually at peak at the time the petition was filed.

Aside from the few "steadies" and "neighbors" hired by Hatai throughout the year to prepare the land and tend the crops, the approximate number of workers that tended and harvested his crops between 1978 and 1980 was as follows: between 25-27 sugar beet hoers and tomato thinners hired by labor contractor Jesus Quintero in April, an undisclosed number of tomato pickers hired by custom harvester Ed Limas in June, and between 66-70 garlic harvesters hired by Quintero in August. In 1980, Quintero's crews consisted of 27 sugar beet hoers in April and 70 garlic harvesters in August; approximately 10-15 workers were hired directly by Hatai to begin the garlic harvest a few weeks before

Quintero's crew started. Quintero's crew of 70 began work the day before the petition was filed and finished the day after. Based on these facts, we find that Sam H. Hatai was at peak when the certification petition was filed and the requirement of Labor Code section 1156.4 was therefore met.^{3/}

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid votes have 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 Sam H. Hatai in the State of California for purposes of collective bargaining, as defined in Labor Code section 1155.2 (a) , concerning employees' wages, hours, and working conditions.

Dated: May 13, 1982

HERBERT A. PERRY, Acting Chairman

ALFRED H. SONG, Member

JEROME R. WALDIE, Member

^{3/} We agree with the IHE that the premature filing of the petition for certification does not invalidate the election. The statutory purpose of measuring peak and eligibility according to the payroll period immediately preceding the filing of the petition, i . e . , insuring a representative election, was fully achieved by this election and there are no allegations of prejudice to either party occasioned by the premature filing. As the California Supreme Court noted in *Silver v. Brown* (1966) 63 Cal.2d 841 [48 Cal.Rptr. 609] and cases cited therein, the literal meaning of the words of a statute may be disregarded to avoid absurd results.

CASE SUMMARY

Sam H. Hatai (UFW)

8 ALRB No. 35

Case No. 80-RC-43-SAL

IHE DECISION

Finding that Sam H. Hatai and William Lane both played significant roles in producing a garlic crop, the Investigative Hearing Examiner (IHE) concluded that they were joint employers of a bargaining unit composed solely of the garlic workers, i. e. , excluding Hatai's other employees (non-garlic workers). Excluding the non-garlic workers obviated any need for the IHE to consider Hatai's contention that it was not at 50% of peak at the time the certification petition was filed. The IHE held that excluding non-garlic workers from the unit was not inconsistent with the provisions of Labor Code section 1156.2, in view of the IHE's conclusion that the joint enterprise of the two garlic producers is the employer herein. As the Board had included all of Hatai's employees (garlic and non-garlic workers) as eligible voters in its Notice and Direction of Election, and as the election results were unanimously in favor of the Union, the IHE recommended certifying the UFW as bargaining agent for a unit comprising only the garlic workers employed by Hatai and Lane.

BOARD DECISION

The Board affirmed the IHE's rulings, findings, and conclusions, except his conclusion that Hatai and Lane were joint employers and his finding that the appropriate bargaining unit included only the garlic workers. The Board held that its Decision in San Justo Farms (Oct. 2, 1981) 7 ALRB No. 29, was controlling and that Hatai alone was the employer of the garlic harvesters due to his more substantial relationship with them. Lane, although he paid the labor contractor v/ho hired the garlic harvesters, was found to be essentially a speculator and marketing contact in the venture, while Hatai rented the land on which the garlic was grown, contributed his equipment, expertise, and daily supervision to the harvest and pre-harvest operation, and had a continuing relationship with the labor contractor and some of the individuals in the garlic harvest crew. Because Hatai employed other (non-garlic) employees in his other crops, the Board's finding, that Hatai was the sole employer of the garlic harvesters as well, necessitated consideration of the peak issue. It found that the Regional Director had properly invoked the peak presumption and that Hatai was clearly at peak at the time the petition for certification was filed. The Board therefore certified the UFW as the exclusive bargaining agent for all of Sam H. Hatai'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:

SAM H. HATAI and
WILLIAM L. LANE, JR.

Case No. 80-RC-43-SAL

Employers,

and

UNITED FARM WORKERS OF
AMERICA, AFL-CIO,

Petitioner.

William B. Hafferty, Jr.,
Salinas Independent Growers
Association for
Sam H. Hatai.

William L. Lane, Jr.
In Propria Persona

Federico G. Chavez
for the Petitioner.

DECISION

STATEMENT OF THE CASE

STEVEN K. NAGANO, Investigative Hearing Examiner: This case was heard by me on April 2, 3, 6 and 7, 1981 in Gilroy, California.

On August 15, 1980, the United Farm Workers of America, AFL-CIO (UFW) filed a Petition for Certification as collective bargaining representative of the agricultural employees of Sam H. Hatai (Hatai). On August 22, 1980, the Regional Director conducted an election among those employees who had been harvesting the garlic crop of Hatai. Out of a total of 36 employees on the eligibility list, 36 voted, and all 36 votes were for the UFW.

Hatai filed timely objections to the election, and the following issues were set for hearing:

Whether the Board properly defined the bargaining unit to include both Sam H. Hatai's regular employees and the garlic harvesting crew. If it is determined that Sam H. Hatai is the Employer of the harvesting crew, then the issue presented is whether the petition for certification was filed when Sam H. Hatai was at 50 percent peak agricultural employment and whether a certification should issue certifying the UFW as the exclusive bargaining representative of Sam H. Hatai's agricultural employees, If it is determined that William L. Lane, Jr., is the Employer of the harvesting crew, then the issue presented is whether a certification should issue certifying the UFW as the exclusive bargaining representative of William L. Lane, Jr.'s agricultural employees.

All parties were given full opportunity to present their positions and participate in the proceedings.

Upon this record, including my observation of the demeanor of witnesses, and after consideration of the arguments made by the parties, I make the following findings of fact and conclusions of the law.

JURISDICTION

None of the parties challenged the status of the UFW. Accordingly, I find that the UFW is a labor organization within the meaning of Labor Code section 1140.4 (f) . As to the agricultural Employer in this matter, that is one of the central issues and will be treated below.

BACKGROUND

Sam H. Hatai is a farmer, and William L. Lane, Jr. , is a general manager for one of the largest garlic producers in Gilroy, California. As they had done in previous years, Hatai and Lane agreed to grow garlic for the 1980 crop. During the harvest in August, 1980, the UFW filed a petition for Certification as the bargaining representative of the agricultural employees of Hatai. The UFW was apparently unaware of a relationship between Hatai and Lane. Thus, the issue arises: who was the Employer of the agricultural employees who produced the 1980 Hatai/Lane garlic crop? Further, was the agricultural Employer at fifty percent of peak employment when the UFW filed its petition for certification?

William L. Lane, Jr. , was raised in Gilroy, and began working in the fields at 10-11 years of age. Lane started working at the Joseph Gubser Company where he was, in Lane's own words, "just a worker". Lane did well at the Joseph Gubser Company and presently is a general manager. There are approximately thirty garlic growers in the Gilroy area, and, in the last thirty years, Joseph Gubser has done business with most of them. Lane has acquired expertise in the area of garlic production, particularly in the field of marketing.

Lane first started growing his own garlic twenty years ago. He has not grown garlic every year. Depending on the conditions during the particular year, Lane would grow five to ten acres of garlic. Some years he contracted the total crop back; other years he guaranteed garlic at a set price. Sometimes

he even speculated with the garlic. Lane has no single manner of doing business and never had a written contract. Over the years, Lane grew garlic with three different individuals, one of whom was Sam Hatai.

Sam Hatai, whose given name is Hideomi S. Hatai, has been farming for about thirty years. He presently farms about forty acres of leased land. Hatai grows garlic, tomatoes, sugar-beets and seed crop. Hatai has grown garlic for 10 to 12 years, intermittently.

Hatai does much of his farming on his own. In 1980, he employed one or two employees to help him. They would work twenty hours per week on the average. Hatai would hire whoever was available, but generally he would employ his neighbors. The employees were not steady, and the relationship was relatively informal. For example, Hatai would not provide these employees with health coverage.

Sam Hatai first met William Lane twenty years ago when Hatai sold a crop of garlic to the Joseph Gubser Company. In about 1964, Lane and Hatai first started growing garlic together. This business relationship lasted for two to three years. Then again, in 1978 and 1979, Lane and Hatai grew garlic together,

In the Fall of 1979, Hatai and Lane verbally agreed to grow garlic during the 1980 season. This agreement involved only garlic, not Hatai's other crops. Out of the forty acres Hatai farms, garlic was grown on nine to ten acres.

Hatai's farming operation is in Hollister, California. The three fields on which he grows are not connected. Hatai has

one field where he keeps his equipment. He has another field of about 6 acres, approximately two to three miles away. He has a third field, of about 15 to 16 acres, approximately one-half mile away from the first, and this is where the 1980 garlic crop was grown.

Hatai entered into the garlic venture with Lane as he wanted to receive a better return on his crop, that is, make more money. Lane, according to Hatai, knows more about garlic than he does. Lane wanted to form the venture with Hatai because Hatai is a skilled farmer and a trustworthy individual.

Although their respective duties and obligations with regard to the venture were not necessarily discussed in detail, each understood what he was to do. Hatai did the actual growing, and Lane provided most of the capital, marketing and entrepreneurial skill.

Lane described his obligations for the 1980 crop: furnish the seed garlic, crack it, plant it, pay for the harvest and handle the marketing of the crop. Hatai was to rent and prepare land, fertilize, irrigate and do the other operations necessary to grow the garlic. According to Lane, because he works full time for the Joseph Gubser Company, he spent very little time at the garlic field, perhaps a total of three or four eight-hour days throughout the year, a few minutes a day.

Lane did not provide any capital equipment for the venture or provide Hatai with money to buy any equipment. All of the machinery was provided by Hatai, including a tractor, irrigating pipe and a chisel or disc to prepare the ground.

Hatai and Lane agreed to a division of profits. After selling the crop, they would be reimbursed for any expenses, including advances made by Lane to Hatai. However, Hatai's costs in providing the equipment, such as the tractor, would not be reimbursed. Any profits remaining would be split fifty-fifty.

Pursuant to their agreement, Hatai rented 9 to 10 acres of land known as Dryden Farm. Hatai also grew soybeans on ten other acres at Dryden Farm. Dryden Farm had not been farmed in three years. It was not very good farm land, being light, sandy and of uneven quality. In high temperatures, a sandy soil is gritty and absorbs more heat than heavier soil with more humus. Moreover, the uneven quality of the soil means that the garlic would not mature at a uniform rate. Hatai made a verbal agreement to pay the owner of Dryden Farm a per acreage fee. Lane had no part in the verbal agreement.

Lane and Hatai described the sequence of operations required to grow garlic: First, Hatai did the heavy cultivation work, including chiseling, discing and listing (putting the ground into furrows). If the land has a history of garlic growing, it has to be fumigated to kill pests. Then the land is mulched and fertilized. After fertilizing or pre-planting, the listed beds which are generally peaked, are worked into flat beds about 40 inches apart. The beds should have 24 to 26 inches of well-mulched soil on top for the seed. The cultivation for the 1980 crop would have been done in November of the previous year. Hatai did the cultivation for the 1980 crop; he did not discuss it with Lane beforehand.

The next step in garlic growing is the preparation of the seed and the planting of the garlic. Lane had the responsibility for supplying the seed garlic. Lane would usually buy the garlic from the dehydrators, that is the large processors or the Joseph Gubser Company. It is not economical for the dehydrators to process a few hundred thousand pounds of garlic so instead they sell it to farmers. Sometimes the dehydrators do not know until November if they will have any garlic to sell to farmers.

Purchasing good seed garlic is not a simple matter. The most productive seed garlic is grown in colder climates, such as Oregon, Nevada and as far north as Washington. The Gilroy area has grown so much garlic that most of the ground is contaminated with nematode and white rot. The first year that seed garlic from out of state is planted in the Gilroy area it grows with great vigor. The second year, the resulting garlic makes a good productive seed garlic. After that, the quality of the crop produced deteriorates. Buying seed garlic from the local area, one runs the risk of contaminated garlic. If the seed garlic is contaminated, the whole crop can be lost.

When Lane purchased the seed garlic he would not guarantee to Hatai that the seed was sound. Hatai and Lane would share the risk of bad seed garlic.

When procuring seed garlic, Lane like most producers, would buy the whole bulbs and break them into cloves for planting. Lane prepared the seed at the Joseph Gubser Company packing

shed in Gilroy. The cloves should be prepared as close to planting time as possible, preferably the same day or the day before. The breaking up of the bulbs is done mechanically, and some of them are bruised. The prepared cloves have a tendency to spoil.

The actual planting of the garlic generally occurs in November or December. For the 1980 crop, planting occurred in December, 1979. Prior to 1961, garlic was planted by hand. Now garlic is planted by machine. Machine planting takes one to three days.

After planting, a herbicide is applied to control the weeds. Then the crop is sprinkled if there is no rain. Watering, insuring that the ground did not dry out, was left solely to Hatai's discretion; he did not consult with Lane.

Weeding of the garlic was done in March or April. Hatai hired his neighbors to do the garlic weeding. They were paid by the hour, and Hatai paid them directly. Hatai would not expect to be reimbursed for the cost of hiring those employees. At about the same time, Hatai hired about twenty employees through a labor contractor to weed the sugarbeets and thin the tomatoes on the other thirty acres at Dryden Farm.

On April 13, 1980, Hatai engaged, through labor contractor Jesus L. Quintero, 27 employees to weed his sugarbeets. Hatai also employed one or two employees directly at that time.

Garlic is harvested in July or August. During 1980, just prior to the harvest, it rained; this was very harmful to the crop. Part of the field was ready to be harvested, part of the field was not, depending on the particular type of soil.

The crop might have had to be harvested in sections. Hatai and Lane anticipated this problem, and Lane, as he was obliged to pay the expense, advanced Hatai money to hire harvesters, if necessary.

In 1980, the majority of the harvest operations occurred in August, having begun in July. The first step in harvesting is undercutting the garlic. A tractor pulls an implement called a knife which cuts the garlic three inches below the surface. Undercutting lifts up the garlic and makes it easier to remove. Undercutting requires two to three workers. There is a tractor driver and perhaps one or two others to walk in back and make sure that the garlic is not being cut.

The timing of the undercutting depends upon the maturity of the garlic. The garlic has to be mature enough for consumption, but if one waits too long, the garlic gets dry and the stems break when one attempts to remove the garlic from the ground. Hatai decided when to undercut, based on examination of the soil and the garlic stems. He also used his own tractor and knife.

After undercutting, the garlic is windrowed: the garlic is removed from the ground and placed on top of the beds. As the crop matured irregularly, no more than five to six employees were used to windrow. The crop was windrowed by employees hired directly by Hatai. Hatai paid them with the money advanced by Lane.

After windrowing, the garlic is trimmed. Using shears, the workers trim off the roots and tops of the garlic. Then,

they place the garlic in large bins for transport to the packing shed. At the packing shed, the garlic is graded.

In 1980, trimming of the garlic occurred on August 14, 15 and 16. Seventy employees, hired through labor contractor, Jesus L. Quintero, harvested the garlic. Lane told Hatai the number of employees needed and told him to contract Quintero. Lane paid Quintero.

Along with the employees, Quintero supplied two supervisors one of whom would be present during the harvest. During the harvest, Hatai was present most of the time. If things were not done correctly, Hatai would inform the supervisor. Lane spent very little time at the field during the harvest, perhaps as little as a total of ten minutes.

The 1980 crop was, in Lane's words, a "disaster". A farm workers' strike impeded harvesting in the area, and the soil got so hot that the garlic cooked in the ground. The cooked garlic has little value, even for dehydrating. All of the garlic was harvested and delivered to Joseph Gubser Company which had supplied the garlic. The Joseph Gubser Company would not buy the garlic but instead took it on consignment. Eventually, about 18 percent of the garlic was recovered; the balance of the garlic was offgrade, of no value. Although Lane was employed by the Joseph Gubser Company, as a garlic grower, he stood in no better position in regards to the company than any other farmer.

As of April, 1980, Hatai and Lane had not settled the accounts for the 1980 crop.

Hatai and Lane first became aware of UFW attempts to organize farm workers in the Gilroy area in July - August, 1980. Hatai was served with a Notice of Intent to Take Access, and then, in August, he was served with a petition for Certification. Two or three days after receiving the Petition for Certification, Hatai told Lane that there was union activity at the garlic field and that a petition had been filed. A Board agent contacted Hatai before the election. Hatai told the Board agent that Lane rather than he was the Employer of the garlic workers. The Board agent attempted to contact Lane, but, when he telephoned, Lane refused to talk. According to Lane, he does not provide personal information without proper identification.

Following receipt of the Petition for Certification, Hatai sought legal advice from the law firm of Sims & Plank. Attorney Sims met with Lane before the election, and Lane told Sims that he was the Employer of the garlic workers. Lane provided Sims with documentation, including, cancelled checks, an employee list, and a declaration. At the time of the meeting with Sims, Lane understood that a petition had been filed that might result in an election. Lane was never served with the Petition for Certification.

ANALYSIS

Who is the Employer of the garlic crew is the threshold question. Although the Notice of Allegations to be Set for Hearing was framed so as to suggest that either Hatai or Lane was the Employer of the garlic crew, facts revealed at hearing suggest otherwise.

In his post-hearing brief, Hatai suggests that he is merely something akin to a labor contractor, providing supervisory and maintenance services. The UFW contends that Hatai and Lane are joint Employers, citing Abatti Farms, Inc. and Abatti Produce, Inc. (1977) 3 ALRB No. 83; and Perry Farms, Inc. (1978) 4 ALRB No. 25. In Abatti Farms (supra) 3 ALRB No. 83, the Board found that nominally distinct businesses were a joint employer.

Labor Code section 1140.4(c) states, in pertinent part, "the term 'agricultural employer' shall be liberally construed to include any person acting directly or indirectly in the interest of an employer in relation to an agricultural employee...."

In Frank A. Lucich Co., Inc. (1978) 4 ALRB No. 89, review denied August 11, (1980), the Board said that by barring union organizers an individual was acting in the interest of the employer. Pursuant to Labor Code section 1140(c), the individual was tantamount to the employer, and the employer was found to have committed an unfair labor practice.

In the instant case, Lane and Hatai each acted in the interest of the other. Lane and Hatai had a symbiotic relationship: Hatai provided farming expertise while Lane provided capital and knowledge of the garlic business. Conceivably, each could have grown garlic on his own. However, testimony reveals that the chances for a successful crop were enhanced when Lane and Hatai joined forces. Moreover, in practice, Lane and Hatai complemented each other, each doing one aspect of garlic production.

Hatai, the farmer, was largely responsible for growing the garlic. Testimony indicated that Lane had some input into cultural decisions. However, for the most part, Hatai made the decisions such as when to irrigate and harvest. Hatai also used his own equipment, including a tractor and pipes to raise the garlic. As Hatai did not deduct the use of his equipment as an expense, he was essentially providing capital equipment for the venture.

Lane provided most of the capital, seventy percent is his estimate. In the event of a poor crop, as the 1980 harvest proved to be, Lane risked his investment. Hatai risked his investment, too. Hatai risked the expenditure of his time spent raising the crop, equipment costs and money. The risk alone distinguishes Hatai from a mere labor contractor or employee of Lane. See: Kotchevar Brothers (1976) 2 ALRB No. 45.

The relationship between Hatai and Lane is inextricable. Each acted in the interest of the other. I therefore find that Hatai and Lane constitute a single Employer within the meaning of Labor Code section 1140.4 (c) .^{1/}

The finding that Hatai and Lane constitute a single Employer suggests that the bargaining unit consists of the garlic

^{1/}As I have found that; Hatai/Lane constitute a single Employer, notice of the election in the form of the service of the Petition for Certification served on Hatai was sufficient. If it is found that Lane was the Employer, I would still conclude that Lane received adequate notice even though 8 Cal. Admin.Code section 20300(g) requires that the petition be served upon the Employer. Lane knew that there would be an election, and although he claimed from the outset that he alone was the Employer, he failed to step forward.

employees and Hatai's other employees. The policy of the Agricultural Labor Relations Board in regard to bargaining units is contained in Labor Code section 1156.2:

"The bargaining unit shall be all the agricultural employees of an employer. If the agricultural employees of an employer are employed in two or more noncontiguous geographical areas, the Board shall determine the appropriate unit or units of agricultural employees in which a secret ballot election shall be conducted."

The language of Labor Code section 1156.2 suggests that the bargaining unit in this case must include Hatai's non-garlic harvesting employees. Such a conclusion is unfair and unreasonable, however. The garlic venture was separate from Hatai's other farming activities. Further, including Hatai's other employees in the bargaining unit would oblige Lane to bargain over the conditions of Hatai's other employees. Lane had no relationship with Hatai's other crops. Including the non-garlic employees in the bargaining unit would group them with employees with whom they have little in common.

The problems associated with the all inclusive bargaining unit can be avoided by first finding that the Employer is Hatai/Lane and hence the bargaining unit only includes the garlic workers. In other words, the Employer Hatai/Lane is an entity separate and distinct from the entity Hatai. Such an interpretation of Labor Code section 1156.2 is consistent with purposes of the Act in fixing the responsibility to bargain with the appropriate Employer.

Defining the bargaining unit as the agricultural employees of Hatai/Lane and not those of Hatai is not inconsistent

with Labor Code section 1156.2. That section of the law was drafted to accomodate a singular purpose, as follows:

"The ALRB has some limited discretion to choose the unit when there are two or more non-contiguous geographical areas involved. One persuasive reason for including all employees in the unit, rather than permitting the Board to choose from a variety of units, was that this approach would allow one union to represent both the field workers and the more highly skilled farm employees. It was felt that this type of representation of the skilled and unskilled employees by different unions might well hamper this desirable objective." [Levy, The Agricultural Labor Relations Act 1975 - La Esperanza de Cal. Para el Future (1975) 15 Santa Clara Lawyer 783,796.]

Thus, the suggested bargaining unit of Hatai/Lane is not inconsistent with the objectives of the drafters of Labor Code section 1156.2. All of the working conditions involved in the production of garlic would be issues for collective bargaining. The garlic jobs include both unskilled jobs, such as weeding, and skilled jobs. Promotion to the various jobs required to grow garlic would be within the reach of all the employees.

Accordingly, I find that the bargaining unit includes the agricultural employees of Hatai/Lane, who work on the garlic crop.

PEAK

Peak employment for the Hatai/Lane venture occurred on August 14, 15 and 16, during the trimming of the garlic. As the Petition for Certification was filed on August 15, 1980 (Board Exhibit 1 (a)), 8 Cal. Admin. Code section 20352(a)(1), which states that the employees eligible to vote shall include

those who were employed during the payroll period which ended prior to the filing of the petition, might seem to indicate that the payroll period would only include the period when Hatai/Lane employed five to six employees to do the windrowing. Such an interpretation, however, would defeat the purpose of the Act.

Labor Code section 1156.4 states, in pertinent part, "Recognizing that agriculture is a seasonal occupation for a majority of agricultural employees, and wishing to provide the fullest scope for employees' enjoyment of the rights included in this part, the Board shall not consider a representation petition or a petition to decertify as timely filed unless the employer's payroll reflects 50 percent of the peak agricultural employment for such employer for the current calendar year for the payroll period immediately preceding the filing of the petition."

Thus, the purpose of the peak rule is for the purpose of obtaining a representative vote. This was obtained here. Those employees working during August 1 through 15 (the trimming period, which covered the peak employment period) were deemed eligible to vote. Board Exhibit 1 (c) . Having obtained a representative vote, it would be hypercorrective to void the election now because the Petition for Certification was filed two days early. Accordingly, I find that the election was timely as to the Act's peak employment requirements.

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RECOMMENDATION

Based on the findings of fact, analysis and conclusions herein, I recommend that the UFW be certified as the collective bargaining representative of the agricultural employees of Sam H. Hatai/William L. Lane, the bargaining unit consisting only of those agricultural employees employed during the course of the garlic venture.

DATED: October 6, 1981

Respectfully submitted,

STEVEN K. NAGANO
Investigative Hearing Examiner