Oxnard, California
Fillmore, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

COASTAL GROWERS ASSOCIATION, S & F GROWERS, Employers, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner.	)	Case Nos. 78-UC-l-OX 79-UC-l-OX 8 ALRB No. 93 (7 ALRB No. 9)

DECISION ON RECONSIDERATION

On April 20, 1977, the Agricultural Labor Relations Board (ALRB or Board) certified, without objection, the United Farm Workers of America, AFL-CIO (UFW) as the exclusive collective bargaining representative of a unit comprising all agricultural employees of S & F Growers (S & F), a harvesting cooperative.

On April 5, 1978, the Board certified the UFW as the exclusive collective bargaining representative of a unit comprising all agricultural employees of Coastal Growers Association (CGA or Coastal), another harvesting cooperative.

On November 17, 1978, the UFW filed a Petition to Clarify Bargaining Unit, (Case No. 78-UC-l-OX) thereby seeking to name CGA and 21 named growers as a single employer of all employees in the certified unit. On February 14, 1979, the UFW filed another Petition to Clarify Bargaining Unit (Case No. 79-UC-l-OX) seeking to name all grower-members of S & F who had previously withdrawn from S & F and "other relative entities" as the single employer of

all employees in the certified unit. . ^

On February 1, 1979, and May 2, 1979, the Salinas Regional Director (RD) recommended that the above petitions be granted, suggesting that the certifications previously issued in those two cases froze the composition of each harvesting association to the growers who were members of the cooperative as of the date of certification. The RD concluded that the obligation imposed on each of the associations by this Board's certification of the UFW as the exclusive collective bargaining representative of its employees, such as the duty to bargain with the UFW, devolved on each individual grower-member who thereafter withdrew from the cooperative.

Timely exceptions to the RD's recommendations were filed by each of the two harvesting associations and the named growers, and the two unit-clarification petitions were thereafter consolidated for hearing. On April 18, 1980, Administrative Law Officer (ALO) Robert LeProhn issued his proposed Decision in this matter, recommending that the petitions be dismissed on the basis of: (1) the UFW's failure to establish that each cooperative was other than a single employer; and (2) due-process inadequacies in the service of the unit-clarification petitions on the grower-members of the individual associations.

On April 8, 1931, this Board, with Member Ruiz dissenting, affirmed the ALO's rulings, findings and conclusions and dismissed both of the petitions for unit clarification. We found that the UFW had failed to establish that the harvesting cooperatives involved could not provide the requisite stability to warrant *"\

designation as the agricultural employers of the employees in the bargaining units named in the original certifications.

On May 11, 1981, we granted the UFW's motion for reconsideration and reopened the record to allow further evidence on these matters. Upon reconsideration of the record, in light of the briefs of the parties, we have decided to reaffirm our earlier Decision dismissing both of the petitions for unit clarification. We find insufficient evidence exists to establish other than single employer status for each of the harvesting associations.

For the reasons set forth in the ALO's Decision, and in this opinion, we hereby affirm our previous Decision dismissing the unit-clarification petitions filed in this matter.

Dated: December 22, 1982

HERBERT A. PERRY, Acting Chairman

JOHN P. McCARTHY, Member

ALFRED H. SONG, Member

MEMBER WALDIE, Dissenting:

The majority finds the harvesting associations, Coastal Growers Association (Coastal) and S & F Growers (S & F), to be the sole employers of the employees of their respective members. As a result, the grower-members have no obligation to bargain with the certified union, and can withdraw from their harvesting association and/or seek labor elsewhere at will. The consequences of that finding will render meaningless the collective bargaining process for the employees who work in the citrus industry if the labor relationship is structured like Coastal or S & F. I believe the Board majority has abdicated its responsibility to provide stability in collective bargaining by designating as the employer an entity, the harvesting association, that has no substantial or permanent interest in the ongoing enterprise.

As the record indisputably discloses, Coastal and S & F are non-profit harvesting associations which own no land or major assets. Each association provides the harvesting labor for its

members as a service, without fee or profits. The members pay the direct costs of labor and a proportionate share of the operating costs of the association. Members have a right to withdraw from the association during a window period each year and may request to withdraw at any other time. Members are not required to use the association for their harvest labor and there is no penalty for utilizing labor from another source. Thus, membership may be retained whether or not the harvesting services are used, as long as each member pays its proportionate share of the operating costs and fees. The members control the amount of labor to be secured by the association, as they have absolute discretion over whether to utilize the association or to seek labor elsewhere. If all of the members were to withdraw and/or to secure all of their labor from other sources, the harvesting associations would have no function.

The issue squarely presented is as follows: What employer entity can provide the most stability in collective bargaining? This Board, in the past, looked to the "whole activity" of the enterprise(s) to see which entity had the most permanent and substantial interest in the agricultural operations. (Napa Valley Vineyards Co. (Mar. 7, 1977) 3 ALRB No. 22? Corona College Heights Orange & Lemon Assoc. (Feb. 23, 1979) 5 ALRB No. 15; Joe Maggie, Inc. (Apr. 10, 1979) 5 ALRB No. 26; San Justo Farms (Oct. 2, 1981) 7 ALRB No. 29.) The members clearly have a more permanent interest. They own the land, the trees, and the fruit. Their business continues whether they utilize the harvesting association, a custom harvester, labor contractor, or hire the employees directly. The harvesting association, on the other hand,

has no interest outside that of its members'.

The record before us refutes the majority's finding that these harvesting associations can provide stability. The UFW filed a Unit Clarification (UC) petition originally arguing that a collective bargaining agreement signed with a harvesting association may be worthless as the members, not being parties to the collective bargaining agreement, could withdraw and/or dissolve the association with no consequences. The original majority Decision by this Board (Coastal Growers Association, S & F Growers (Apr. 8, 1981) 7 ALRB No. 9) dismissed the UC petitions on the basis that such arguments by the UFW were "... grounded on hypothetical possibilities...." Upon reconsideration, we reopened the record. The UFW provided documents showing that S & F was dissolved by vote of its directors and ratification by its members on May 31, 1981. Yet, the majority ignores the fact that the "hypothetical possibility" became reality.

In the past, this Board has found harvesting associations to have the needed stability and permanency of relationship to the agricultural operation to be the sole employer of the harvest employees. (Corona College Heights Orange & Lemon Assoc., supra, 5 ALRB No. 15; Bonita Packing Co., Inc. (Dec. 1, 1978) 4 ALRB No. 96.) However, those cases did not involve nonprofit associations with no major assets. Corona owned equipment, packed and marketed the fruit, and financed the above operations. Bonita was a for-profit corporation, owned and operated a packing shed, and its members were required to own stock. In Limoneira Co. (Aug. 25 1981) 7 ALRB No. 23 we found two grower/customers of a harvesting

association not to be employers and net to have a duty to bargain. Limoneira, however was a for-profit corporation and also owned and operated a packing house.

I would find that nonprofit harvesting associations which own no land or major assets generally do not possess the stability required of employers in collective bargaining to further the purposes of our Act. This is especially true in the two cases before us where the members are under no obligation to utilize the harvesting association and may withdraw at will. A collective bargaining agreement signed by such a harvesting association and a certified union will not lead to stability in labor relations when the members of the association may so easily and without consequence simply procure their labor from another source. Nor does a collective bargaining agreement promote peace in the fields or stability in labor relations when one party to the contract can terminate its operations without apparent consequence, as S & F did in this circumstance.[1/]

In order to encourage collective bargaining and provide stability in the collective bargaining relationship, I would find the members of the association, together with the association, to

---

[1/] I note that the only obligation upon such an association when it dissolves would be to bargain over the effects of its going out of business. But even this duty is meaningless since the association has no power to compel its members to remain members or to utilize its services. Nor would it have any authority to assess its members to pay the workers severance pay or obtain agreements from them that they would continue to use the same work force. Indeed, the legal requirements of an entity going out of business would be inapposite because the "business" of harvesting the members' trees would continue; it would simply be arranged by some other person or entity that had no duty to bargain with the certified union.

be a single employer and to have the duty to bargain with the certified union. Those who have created a harvesting association as an advantageous means of serving their business interest should not be able to hide behind that entity in order to avoid statutory obligations formulated for the public's protection. (Marshall v. Coastal Growers Association, S & F Growers, et al. (9th Cir. 1979) 598 F.2d 521.) Since all members, by their membership agreement, delegate responsibility for labor, there is common labor relations policy and management. The same labor pool provides the labor for each of the members. There is common ownership in the sense that the associations, owning nothing themselves, are "owned" by their members. The members are the association. For all the above reasons, I would find that each association and its members constitute a single employer.

Due Process Considerations

Respondents argue that it would be a denial of due process to clarify the unit by naming individual growers as employers since those growers were not served nor named in the original petition for certification. I find merit in part of this argument. The Petitions for Certification that were filed in 1977 and 1978 named S & F Growers and Coastal Growers Association as the respective employers and were served upon each association. As those harvesting associations Were acting as the duly delegated agents of their members (Santo Tomas Produce Association (1961) 362 P.2d 977), service upon them was sufficient to notify their members that the UFW was seeking an election. However, since the petitions named only the harvesting associations, there was inadequate notice

to the members if, in fact, the UFW was seeking to have the members included in the bargaining unit.

Since in some cases a harvesting association may be found to be the sole employer for collective bargaining purposes, the petitioning union must state with specificity in its petition whether it is seeking the association or the association and its members as the duly designated employer.

In the instant cases, the UFW initially sought only to have the harvesting associations as the duly designated employers of their respective lemon harvesting employees. On November 17, 1978. the UFW filed a Petition to Clarify the Bargaining Union in Coastal Growers Association, Case No. 78-RC-2-V. On February 14, 1979. the UFW filed a Petition to Clarify the Bargaining Unit in S & F Growers, Case No. 79-RC-3-V.

I would find that the service of the Petitions to Clarify the Bargaining Unit on Coastal and S & F constituted adequate notice upon all growers who were members of the respective associations at that time that their status was in dispute and that the hearing on the UC petition provided them an opportunity to be heard regarding this issue. (Mullane v. Central Hanover Bank & Trust Co. (1950) 339 U.S. 306.) Service upon a duly authorized agent is adequate if it is the most feasible and direct means available to serve the principals.

Each of the harvesting associations and the individual members thereof are entitled to rely upon the original certification until a new decision, certification, clarification, or amendment is issued. (Alaska Roughnecks & Drillers Association v. NLRB

(9th Cir.1977) 55 F.2d 732, cert. denied 434 U.S. 1069.) Thus, on a UC petition, no new bargaining obligation would arise until the UC decision issued.

I would find that Coastal and the individual growers who were its members at the time the UC petition was served constitute a single employer of their lemon harvesting employees,[2/] and that they have a duty to bargain, upon request, with the certified representative of their employees.

I would also find that S & F and the individual growers who were its members at the time the UC petition was served constitute a single employer of their lemon harvesting employees, and that they have a duty to bargain, upon request, with the certified representative of their employees.

Dated: December 22, 1982

JEROME R. WALDIE, Member

[2/] Section 1156.2 does not preclude the Board from finding more that one entity the employer of a group of employees. If two business entities were involved in a joint venture for one crop, we could find the appropriate unit to include the employees of that joint venture for that one crop. (San Justo Farms (Oct.2, 1981) 7 ALRB No. 29; Kochevar Bros. (Mar. 2, 1976) 2 ALRB No. 45.

CASE SUMMARY

Coastal Growers Association,
S & F Growers, (UFW)

8 ALRB No. 93
(7 ALRB No. 9)
Case Nos. 78-UC-l-OX
79-UC-l-OX

PRIOR BOARD DECISION

On April 8, 1981, the ALRB dismissed two petitions to clarify bargaining units which had been filed by the United Farm Workers of America, AFL-CIO (UFW). (Coastal Growers Association, S & F Growers (1981) 7 ALRB No. 9.) On May 11, 1981, the Board granted the UFW's motion to reconsider its prior decision and reopened the record to permit further evidence.

BOARD DECISION

The Board reaffirmed its prior decision which dismissed the two petitions to clarify bargaining unit.

DISSENT

Member Waldie dissented, stating that he would find that each of the two harvesting associations as a sole employer, would fail to provide sufficient stability in collective bargaining. He would find that the association members have a more permanent interest in the business and that the members and the association together constitute a single employer. Member Waldie would, however, find that only those growers who were members of the associations at the time of service of the petitions to clarify the bargaining units received adequate notice so as to be fairly held to be the employing entities.

* * *

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

* * *