Oxnard, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SATICOY LEMON ASSOCIATION, S & F GROWERS ASSOCIATION, and the named Grower-Members of S & F GROWERS ASSOCIATION, Employers, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner.	Case No. 81-RC-11-OX 8 ALRB No. 94

DECISION AND ORDER SETTING ASIDE ELECTION

On May 19, 1981, the United Farm Workers of America, AFL-CIO (UFW), filed a petition for certification under section 1156.3[1/] of the Agricultural Labor Relations Act (Act), seeking an election in a unit composed of the agricultural employees of Saticoy Lemon Association (Saticoy or SLA) and all agricultural employers who utilize SLA and its packing shed. The UFW included the names of 81 growers as well as S & F Growers Association (S & F) and Ortiz Bros. Trucking as the employers who utilize SLA and its packing shed.

The Oxnard Regional Director dismissed that petition on the following grounds: (1) that SLA was not an agricultural employer; (2) that the showing of interest underlying the petition was inadequate; (3) that the petitioned-for unit was inappropriate; and (4) that the UFW was already certified as the exclusive

[1/] All section references herein are to the California Labor Code unless otherwise specified.

collective bargaining representative of the only appropriate unit. The UFW sought review of the Regional Director's dismissal by the Agricultural Labor Relations Board (ALRB or Board).

The Board, with member McCarthy dissenting, directed that a representative election be conducted among the agricultural employees in each of the following units in which the Regional Director determined that there was a sufficient showing of interest:

(I) all steady agricultural employees of the grower-members of S & F who were engaged in lemon farming;

(II) all other agricultural employees of those grower-members who were engaged in lemon farming;

(III) all agricultural employees of S & F engaged in harvesting the lemon crop of the grower-members of S & F; and

(IV) all agricultural employees of SLA engaged in any agricultural activity for the grower-members of S & F.

The Board directed that in the event the Regional Director conducted an election in any of the above-described units, all ballots be impounded pending resolution as to the appropriate unit(s) and identity of the employer(s) of the employees in the appropriate unit(s). From May 30, 1981, to June 1, 1981, an election was conducted among the agricultural employees in the four categories. A total of 280 ballots were cast, of which 31 were challenged ballots. All ballots were impounded in accordance with the Board's direction.

The UFW, SLA, S & F, and the individual grower-members of S & F all timely filed post-election objections, the following

of which were heard before Investigative Hearing Examiner (IHE) Joel Gomberg on August 18-26, 1981:

> Whether Saticoy has any agricultural employees, and if it does not, whether it can be an agricultural employer within the meaning of Labor Code §1140.4(c);
>
> Whether Saticoy, S & F and [S & F's grower-members] constitute a single employer;
>
> Whether the bargaining unit is proper within the meaning of Labor Code §1156.2;
>
> Whether the bargaining unit results in the disenfranchisement of agricultural employees;
>
> Whether the election is barred by the UFW's certification as collective bargaining representative of the agricultural employees of S & F;
>
> Whether the election is barred by the collective bargaining contract between the UFW and S & F;
>
> Whether the [UFW] properly served the petition for certification upon the [grower-members of S & F];
>
> Whether the Board agents failed to notify the parties of the date and location of the election, and if so, whether such conduct affected the outcome of the election;
>
> Whether the three employees of Pro-Ag who voted in the election were properly included within the bargaining unit.

On January 4, 1982, the IHE issued the attached Decision in which he found that S & F is the sole employer herein and that the appropriate bargaining unit consists of all the agricultural employees of S & F. The IHE recommended, based on the nature of the lemon harvesting industry, that a limited employer status be conferred upon the grower-members of S & F that would require any grower-member who withdrew from S & F, a voluntary harvesting association, to bargain, on request, with the UFW regarding the working conditions of that grower's lemon crop employees. The

IHE recommended that if the Board found its 1977 certification of the UFW as collective bargaining representative of all S & F's agricultural employees was insufficient to have given S & F's individual grower-members notice of the quasi-bargaining obligation proposed by the IHE, then the ballots cast in this election by S & F's lemon harvest employees should be opened and counted, and the results certified.

S & F, the individual grower-members of S & F, and the UFW timely filed exceptions to the IHE's decision with accompanying briefs. SLA, S & F, the individual grower-members of S & F, and the UFW all timely filed reply briefs. An amicus brief was submitted by Coastal Growers Association and the individual grower-members of S & F who had previously withdrawn from S & F.

The Board has considered the IHE's Decision in light of the record and briefs of the parties and has decided to affirm the rulings, findings, and conclusions of the IHE only to the extent consistent herewith, and to set aside the election.

We affirm the conclusion of the IHE that S & F is the sole employer of the unit employees and that the appropriate unit consists of all agricultural employees of S & F.

The UFW's objections to this unit are based on the grounds that S & F has elected to cease operations. We are not, on this record prepared to speculate on the reasons behind S & F's decision to go out of business. We note that as a general rule employers, agricultural or industrial, are free to cease operations, in whole, Textile Workers v. Darlington Mfg. Co. (1965) 380 U.S. 263 [58 LRRM 2657] or in part, First National Maintenance Corp. v. NLRB

(1981) 452 U.S. 1107 LRRM 2705].

We are not unmindful of the disruption that a partial closure or a full cessation of operations can have on the affected employees' relations with their employer. (See, John V. Borchard (July 26, 1982) 8 ALRB No. 52; Babbitt Engineering & Machinery, Inc. (Feb. 19, 1982) 8 ALRB No. 10; Abatti Farms, Inc. (Oct. 28, 1981) 7 ALRB No. 36; San Clemente v. ALRB (1981) 29 Cal.3d 874 [176 Cal.Rptr. 768]; and generally, Comment, Sucessorship Under Howard Johnson: Short Order Justice for Employees (1976) 64 Col.L.Rev. 795.) However, we are not convinced by the UFW's exceptions or the IHE's proposal for a limited bargaining concept, that S & F is not the sole employer of the employees in the appropriate unit.

Accordingly, we conclude that S & F Growers Association is the sole employer and that the appropriate bargaining unit comprises all the agricultural employees of S & F in the State of California. As we certified the UFW as the exclusive collective bargaining representative of that unit on April 20, 1977, we find no question concerning representation has been raised by the petition for certification. Accordingly we reaffirm our prior certification, and we hereby order that the election in this matter be, and it hereby is set aside, and that the petition be, and it hereby is, dismissed. Dated:

December 22, 1982

HERBERT A. PERRY, Acting Chairman

ALFRED H. SONG, Member

MEMBER McCarthy, Concurring in Part, Dissenting in Part:

I agree with the result of the majority opinion but I reject the suggestion that this Board may be authorized to inquire into the motivations, or the reasons, which prompt an employer to permanently terminate its entire business. The U. S. Supreme Court has held that an employer has the absolute right to terminate his or her entire business for any reason, including anti-union bias, and that, "... such action is not an unfair labor practice." (Textile Workers v. Darlington Manufacturing Co. (1965) 380 U.S. 263 [58 LRRM 2657].)

I would also explicitly disavow the ALO's invention of a "limited bargaining obligation" to be imposed on any individual grower-member of the harvesting association who-withdraws from the association. The ALO's proposal fails in two material respects. First, the Union has not been certified as the representative of any of the individual members' employees and it has not even been determined which, if any, of the members

are in fact agricultural employers within the meaning of Labor Code section 1140.4 (c). The Agricultural Labor Relations Act (Act) requires agricultural employers to bargain collectively with a union only after it has been properly certified by the Board, following an election in which the employer has participated, as the bargaining representative of their respective employees. The prerequisites of Labor Code sections 1153(f) and 1159 have not been satisfied in the instant case. Secondly, Labor Code section 1155.2(a) contemplates that an employer will bargain in good faith to contract or impasse with the certified representative of its employees. The "limited" bargaining duty developed by the ALO is manifestly at odds with the statutory scheme.

Dated: December 22, 1982

JOHN P. McCARTHY, Member

MEMBER WALDIE, Concurring and Dissenting:

I would set aside the election, but not for the reasons stated by the majority. I find that S & F Growers Association (S & F) and its individual members constitute a single employer. In my opinion, the issues raised by this petition and election would be resolved or made moot through the Unit Clarification Petition, 79-UC-l-OX. (See my dissenting opinion, Coastal Growers Association, S & F Growers (Dec. 22, 1982) 8 ALRB No. 93. Decision on Reconsideration.) Dated: December 22, 1982

JEROME R. WALDIE, Member

CASE SUMMARY

Saticoy Lemon Association,
S & F Growers Association,
and the named Grower-Members
of S & F Growers Association

8 ALRB No. 94
Case No. 81-RC-ll-OX

IHE DECISION

On May 19, 1981, the United Farm Workers of America, AFL-CIO (UFW), petitioned for an election in a unit composed of all agricultural employees of Saticoy Lemon Association (SLA) a commercial packing shed, S & F Growers Association (S & F), a voluntary lemon harvesting cooperative, Ortiz Brothers Trucking and 81 named lemon growers who were members of S & F. The Oxnard Regional Director dismissed the petition but, on review, was reversed by the Agricultural Labor Relations Board (Board), which directed that an election be held segregating the ballots into four groups; those cast by (1) all steady employees of S & F's grower-members engaged in lemon farming; (2) all other agricultural employees of S & F's grower-members' (3) all employees of S & F engaged in harvesting lemons; and (4) agricultural employees of SLA engaged in agricultural work for S & F's grower-members. The Board directed that the ballots be impounded.

The IHE determined that S & F is the sole agricultural employer; that the grower-members of S & F and SLA are not, either severally or jointly with S & F, the agricultural employer(s) of the lemon-harvesting employees. However, the IHE proposed that the individual grower-members be required to bargain individually with the UFW when and if they withdraw from S & F. He therefore recommended that, should the. prior certification to the UFW as the exclusive representative Of the lemon harvesting workers of S & F be deemed insufficient notice to the individual growers of their responsibility to so bargain with the UFW, the ballots of the S & F employees should be opened and tallied and the results certified.

BOARD DECISION

The Board affirmed the conclusion of the IHE, that the unit comprises all S & F agricultural employees and that S & F is the sole employer of the unit employees. The Board noted that S & F had ceased operations but declined to speculate as to S & F's motivations for ceasing operations. The Board therefore found that the UFW was already certified as representative or the appropriate unit and set aside the election and dismissed the petition.

CONCURRENCE/DISSENT

Member Waldie concurred in the result reached by the majority and agreed that the election should be set aside. However, he disagreed with the reasons given for this result by the majority. He would have found that the issues raised by this petition and election were resolved or made moot, in conformity with his dissenting opinion in Coastal Growers Association (Dec., 1982) 8 ALRB No.

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* * *

STATE OF CALIFORNIA

BEFORE THE

AGRICULTURAL LABOR RELATIONS BOARD

SATICOY LEMON ASSOCIATION, S & F GROWERS ASSOCIATION, and the GROWER/MEMBERS OF S & F,1/ Employers and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner	Case No. 81-RC-ll-OX DECISION OF INVESTIGATIVE HEARING EXAMINER

APPEARANCES:

Leon L. Gordon and
William S. Marrs, for
Saticoy Lemon Association and
Pro-Ag, Inc.

Robert P. Roy for S & F Growers
Association and the Grower/
Members of S & F, with the
exception of S & K Ranch

Richard S. Rosenberg for S
& K Ranch

Chris A. Schneider for
the Petitioner

STATEMENT OF THE CASE

Joel Gomberg, Investigative Hearing Examiner: This matter was heard by me on August 18, 19, 20, 24, 25, and 26,

1/The names of the grower/members are listed in the proof of service attached to the petition for certification.

1981,[2/] in Oxnard, California, pursuant to a Notice of Investigative Hearing issued by the Executive Secretary.

A petition for certification (ALRB Exh. 1-A) was filed by the United Farm Workers of America, AFL-CIO (hereafter "UFW" or "the Union") on May 20. The petition designated as the Employer Saticoy Lemon Association (hereafter "Saticoy"), S & F Growers Association (hereafter "S&F"), Ortiz Bros. Trucking, Inc., the members of S&F, and all other agricultural employers who utilize Saticoy and its packing shed. On May 22, the in Regional Director of the Board's Oxnard Regional Office dismissed the petition for failing to identify an appropriate agricultural employer and for constituting an inappropriate bargaining unit (ALRB Exh. 1-H). On May 25, the UFW filed with the Board a Request for Review of the Regional Director's dismissal (ALRB Exh. 1-J). The Regional Director amended his dismissal letter on May 26 (ALRB Exh. 1-1).

On May 27, the Board granted the UFW's Request for Review and ordered the Regional Director to hold an election in the following unit, provided that the UFW had made out a showing of interest:

1. All the steady agricultural employees of member/growers of S&F Growers Association;

2. All the agricultural employees from whatever source derived engaged in any agricultural activity from the member/growers of S&F Growers Association;

3. All the agricultural employees of S&F Growers Association engaged in harvesting the lemon crop of grower/members of the Association;

2/All dates refer to 1981 unless otherwise noted.

4. All the agricultural employees of Saticoy Lemon Association engaged in any agricultural activity for grower/members of S&F Growers Association.

The Board ordered the Regional Director to segregate the ballots of each group of agricultural employees described above and to impound the ballots. In ordering the election, the Board noted "the complex question of the identity of the agricultural employer in light of the unique and different practices involving the utilization of labor in the agricultural lemon industry" (ALRB Exh. 1-K).

On May 28, the Board issued a clarification of its Order Directing an Election and modified the bargaining unit as follows:

1. All the steady agricultural employees of member/growers of S&F Growers Association engaged in lemon farming;

2. All the agricultural employees from whatever source derived engaged in lemon farming for the member/growers of S&F Growers Association;

3. All the agricultural employees of S&F Growers Association engaged in harvesting the lemon crop of grower/members of the Association;

4. All the agricultural employees of Saticoy Lemon Association engaged in any agricultural activity for grower/members of S&F Growers Association.

[ALRB Exh. 1-L.]

Pursuant to this Order, the Regional Director, after finding that the petition for certification was accompanied by authorization cards sufficient to demonstrate an adequate showing of interest, conducted an election in the unit described

above on May 30 and June 3. The tally of ballots indicates that 249 votes were cast at the election. Because the ballots were impounded, the tally does not indicate whether the UFW received a majority of the votes.

Saticoy, S&F, the grower/members of S&F,[3/] Pro-Ag, Inc., and the UFW filed timely petitions pursuant to Labor Code §1166. 3 (c) objecting to the conduct of the election.

On July 15, the Executive Secretary set the following issues for hearing:

> Whether the United Farm Workers of America, AFL-CIO (UFW) properly served the petition for certification upon the members;
>
> Whether the Board agents failed to notify the parties of the date and location of the election, and if so, whether such conduct affected the outcome of the election; Whether Board agents failed to indicate the proper address of the permanent polling site on the Notice and Direction of Election, and if so, whether such conduct affected the outcome of the election;
>
> Whether Saticoy has any agricultural employees, and if it does not, whether it can be an agricultural employer within the meaning of Labor Code §1140. 4 (c);
>
> Whether Saticoy, S&F and members constitute a single employer;
>
> 6. Whether the bargaining unit is proper within the meaning of Labor Code §1156.2?
>
> 7. Whether the bargaining unit results in the disenfranchisement of agricultural employees;

3/S & K Ranch was not a party to the grower/members' objections petition.

Whether the three employees of Pro-Ag who voted in the election were properly included within the bargaining unit;

9. Whether, in the Notice and Direction of Election, Board agents altered the class of agricultural employees eligible to vote in the election, and if so, whether such conduct resulted in the disenfranchisement of agricultural employees;

10. Whether the election was conducted at a time when the peak employment requirements of the Act were not met;

11. Whether the election is barred by the UFW's certification as collective bargaining representative of the agricultural employees of S&F;

12. Whether the election is barred by the collective bargaining contract between the UFW and S&F;

13. Whether Board agents began polling 45 minutes late, and if so, whether such conduct affected the outcome of the election;

14. Whether the Board agents conducted the polling of voters without providing the Employer an opportunity to have observers present, and if so, whether such conduct affected the outcome of the election.

On August 3, four of the UFW's objections were set for hearing. Upon motion by the UFW, these objections are being held in abeyance pending a determination of the issues presented in the Employers' objections petitions.

During the course of the hearing, the Employers withdrew their objections contained in Issues 3, 9, 10, 13, and 14 set for hearing. With respect to Issue 2, only Saticoy maintained its notice objection.

The Employers and the UFW were represented at the

hearing and were given full opportunity to participate in the proceedings.[4/] All parties filed post-hearing briefs and reply briefs.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, I make the following findings of fact and conclusions of law:

I. THE ISSUES RELATING TO EMPLOYER STATUS AND THE PROPOSED BARGAINING UNIT (ISSUES 4, 5, 6, AND 7)

A. The Relationship Between S&F And The Union.

After a representation election conducted by the Board, the Union was certified on April 20, 1977, as the exclusive bargaining representative for "[a]11 agricultural employees of the employer (S & F Growers Association) in the State of California." S&F and the Union entered into a collective bar-gaining agreement effective May 19, 1978. The agreement expired on May 31, 1981.

On February 14, 1979, the Union filed a Petition to Clarify Bargaining Unit in order to denominate S&F and its grower/members as a single employer for purposes of the certification. The impetus for the petition was the withdrawal from S&F of several of its grower/members after the collective bargaining agreement went into effect.

The Board consolidated the Union's unit clarification petition in the S&F case with a similar petition filed with respect to Coastal Growers Association. An investigative hearing

4/The Regional Director was represented with respect to Issue 2. He did not file a post-hearing brief.

was held in September, 1979. The Investigative Hearing Examiner's Decision, which recommended dismissal of the petitions, was issued on April 18, 1980. The Board upheld the Investigative Hearing Examiner's recommendation in Coastal Growers Association (1981) 7 ALRB No. 9 (Member Ruiz dissenting). The Union filed a Motion for Reconsideration, which has been granted by the Board. Although the Board's decision to grant reconsideration in effect annuls the findings of fact and conclusions of law contained in Coastal Growers, so that they are not binding in this proceeding either as general precedent or the law of the case, the record in Coastal Growers is clearly relevant to this case. The transcripts and exhibits were admitted as a joint exhibit. Because the Investigative Hearing Examiner's decision in Coastal Growers treats in great detail many of the same issues raised here, I have, in the interests of administrative economy, not restated all the facts and legal reasoning contained in it. A reader interested in attaining a full understanding of the background of the issues in this case would be well advised to read the Investigative Hearing Examiner's decision in Coastal Growers.

On March 30, the membership of S&F voted to dissolve the Association effective May 31, 1981. S&F notified the Union of this decision and offered to bargain with respect to its effects on S&F's agricultural employees. After its operations ceased on May 30, S&F terminated all of its agricultural employees.

B. Lemon Production In Ventura County.

Commercial Lemon production involves four basic

functions: growing, harvesting, packing or processing, and marketing. The organization of the industry has changed rather dramatically in the past 30 or 40 years and is continuing to evolve. An understanding of how the basic functions are per-formed, and by whom they are performed, is essential to the re-solution of the serious issues presented by this case.

In the past, it was not uncommon for large growers to c control the production process. They were able to recruit a work force, often by offering food, housing, and a reasonably long season. Today, such large land holdings have nearly disappeared. The industry in Ventura County is characterized by a relatively large number of relatively small growers. Because they are unable to recruit harvest workers for the short time they are needed, the growers must turn to a harvest association, or custom harvester for their peak labor supply. As many lemon groves have been bought by absentee investors who lack specialized knowledge about lemon growing, land management companies have come into existence to handle all the cultural practices for the grower, as well as making arrangements for packing and marketing.

The key to understanding the organization of the lemon industry is the packinghouse. The flow of lemons to market is controlled by marketing orders of the United States Department of Agriculture, Under federal law, the Lemon Administrative Committee makes a weekly recommendation to the Secretary of Agriculture for the maximum total carload volume of lemons which can be shipped into the domestic market. Through a complicated formula, the total volume is apportioned among the

various packinghouses. Even if a grower wished to control the entire production process, he would be unable to do so, because he would have no access to the marketplace.

Because it is the packinghouse which receives marketing allotments, it naturally must coordinate the various phases of the production process. The packinghouse must regulate the flow of lemons in order to meet the quotas set by the marketing order without exceeding its storage capacity. Therefore, it is the packinghouse which determines when the lemons are to be harvested and hauled to its packing sheds. In this complex scheme of regulation there is no place for the grower as a major decision-maker.

The present case involves one packinghouse (Saticoy) which is part of Sunkist Growers, Inc., the nation's largest marketer of fresh lemons, one harvesting association (S&F), the 80-odd grower/members of S&F, and the agricultural employees of these entities who work in the growing and harvesting phases of lemon production.

C. The Relationship Between Saticoy And Its Grower/Members.

Saticoy is a non-profit, cooperative packing association organized pursuant to provisions of the Food and Agricultural Code. It, in turn, is a member of Sunkist Growers, Inc. Each grower/member of Saticoy must also be a member of Sunkist, which has broad authority over the marketing of the lemons packed by Saticoy. Saticoy and its members make up only a small part of the total Sunkist enterprise. Ultimately, it is Sunkist's marketing decisions which govern the harvesting,

packing, and sale of the lemons grown by Saticoy's members.[5/]

At the time of the hearing, Saticoy had approximately 250 members, one-third of whom also belonged to S&F. Each member contracted with Saticoy to have all its lemons packed by it. Once the lemons were picked by S&F and hauled to one of Saticoy's three packing sheds, the grower/members ceded all control over the fruit to the Sunkist organization.

Saticoy's two field coordinators determine when the groves of its members are to be picked. The determination is based on the maturity of the lemons, the market's demand for the fruit, and the storage capacity of the packing shed. Once the storage capacity of the sheds has been reached, there will be no further harvesting until some of the stored lemons are ordered to be marketed by Sunkist.

As the Administrative Law Officer noted in Coastal Growers, the individual grower/members are virtually powerless with respect to the critical decisions in the lemon production and marketing process. They are not always even notified of when their lemons are to be picked. Very few of the growers are present on their property during the harvest. Saticoy provides S&F with the funds to pay the harvest employees; these expenses are deducted from the proceeds of the sale of the grower/ member's lemons.

D. The Relationship Between S&F And Its Grower/Members.

S&F, like Saticoy, is a non-profit cooperative corporation, organized under provisions of the Food and

5/Sunkist names five of the 11 members of the Lemon Administrative Committee, which sets the marketing orders for the industry.

Agricultural Code. Its only function is the harvesting of the lemons of its members. But, while Saticoy's members are required to have all their lemons packed by it, S&F's members are not obligated to have their fruit picked by S&F. Several of the largest grower/members hire their own harvest labor.

S&F was formed by Saticoy in the mid-1960's, about the time when the Bracero program ended. Until 1977, all of Saticoy's members also belonged to S&F.

When Saticoy determined that the lemons of an S&F grower/member were to be picked, S&F was notified. S&F crews picked the lemons using equipment, such as gloves and shears, owned by S&F. The employees were transported to the fields in buses leased from Saticoy. For many years, a large percentage of the workers lived in housing owned by Saticoy. The harvest workers were hired, disciplined, fired, and directed in their work by S&F supervisors. Saticoy shared with S&F an interest in the quality of the picking. Saticoy's two field coordinators would be present in the fields during the harvest to check the quality of the lemons. If any problems were noted, S&F's field superintendent would be informed. Aside from this quality control function, Saticoy had little or no contact with the harvest employees. The collective bargaining agreement between S&F and the Union contains an appendix concerning "Quality of Citrus Harvest Workmanship" which notes the "paramount importance" of quality to both parties. The Union agreed to cooperate with S&F in quality control programs. Because most of the lemon groves of the S&F grower/members are relatively small, it did not take long for an S&F

crew of 30 employees to complete the harvest of any given grower/member's lemons. At times, a crew would pick in as many as three different grower/members' groves in a single day. Often, the pickers would not even know the name of the grower who owns the lemon trees. While most groves are picked two or three times a year, there was no assurance that the same harvest crew would be assigned to do the picking each time. Thus, the harvest employees have virtually no relationship with individual growers.

E. The Relationship Between Saticoy And S&F.

S&F was created by Saticoy. Saticoy was formed in 1923. During its early years, before the advent of specialization, it hired the harvest workers directly.[6/] S&F was formed to ensure a stable labor supply for Saticoy's members. As noted previously, S&F's employees continued to live in housing supplied by Saticoy and to use its buses and other equipment.

In recent years, as Saticoy has expanded, other harvesting entities have begun to pick the lemons grown by Saticoy's members. They include SAMCO, Vega, 4-B, SAG, Molino, Pardo, Jimenez, and Alamillo.[7/] These harvesting entities contract with growers for harvesting services. While Saticoy's relationship with these new organizations does not have the same historical character as did its relationship with S&F, Saticoy's witnesses testified credibly that the basic working relationship is the same between it and all the harvest

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6/Saticoy Lemon Association (1942) 41 NLRB 243.

7/Each of these harvesters has contracted with at least one of S&F's former grower/members to harvest lemons.

organizations. That is, Saticoy determines when a grove is to be picked, it advances funds for the organizations' payroll, and it monitors the quality of the pick.

Saticoy has no written contracts governing its relationships with the harvest organizations. At one point in the hearing, Saticoy's manager, Carl McKnight, testified that Saticoy chose the harvesting organization for each of its members. He quickly changed his testimony to indicate that each grower decided which entity would pick its lemons. As a formal matter, it is clear that the grower contracts with a harvesting organization or joins a cooperative harvest association, such as S&F. Saticoy is not a legal party to these agreements. But, on a practical level, it is clear that growers look to Saticoy for advice and direction in making such decisions. Although Saticoy's witnesses attempted to downplay Saticoy's role in the harvest process, there is no doubt that Saticoy has a real and legitimate interest in both the quality and the cost of harvesting. Both factors are involved in determining the grower's ultimate profit. In order to keep its members, it is in Saticoy's interest to maximize those profits.[8/] In compiling its records of production, Saticoy noted both the number of bins picked and the number of men doing the picking. In sum, while there is no written contract between the harvest organizations and Saticoy, the harvesting businesses of necessity work closely with Saticoy and have a powerful interest in doing work which meets Saticoy's standards.

8/There are a number of packinghouses in Ventura County which compete with Saticoy for grower/members. Some or Saticoy's grower/members have withdrawn in the past year.

F. The Relationship Among The Member/Growers Of S&F.

Apart from its one general membership meeting per year, the record does not indicate that S&F's member/growers have any contact. Each is in charge of its own lemon groves and is compensated separately from the others. Many of the grower/members are absentee landlords and have probably never met each other. Many of them grow crops other than lemons. The parties stipulated that 193 of Saticoy's approximately 250 members grow crops other than lemons. Avocadoes and oranges are the predominant commodities. During the payroll period preceding the filing of the election petition, S&F's grower/members employed at least 238 agricultural employees not engaged in lemon work. The grower/members also employ an undetermined number of agricultural employees who perform pre-harvest cultural work in the lemon groves. There is no evidence of any interchange of these employees among the grower/members. Neither S&F nor Saticoy has any contact with these non-harvest employees. The only relationship among the grower/members is their membership itself.

ANALYSIS AND CONCLUSIONS

The Board ordered that an election be held in the unit proposed by the Union so that it might examine the complex structure of the lemon industry in order to determine how the collective bargaining relationship between employers and workers ought to be defined. The Union's principal argument is that the high degree of interdependence in the lemon industry among packinghouse, harvest entity, and grower has created a trinity of employers, all of whom must be included in a bargaining unit in order to create a stable bargaining relationship. The Union

lays particular stress on the non-profit nature of S&F, which, it contends, makes it an unsuitable candidate for sole Employer 3 status. While the positions of the Employers differ, none seriously contends that either the individual grower/members or Saticoy ought to be deemed the sole employers of the harvest workers. Although the non-harvest lemon employees are included in the proposed unit, the record is almost entirely devoid of evidence concerning them.

A. Who Is The Employer Of The Lemon Harvest And Lemon Farming Employees?

Until grower/members began to withdraw from S&F after it entered into a collective bargaining agreement with the Union, the Union did not question the status of S&F as an agricultural employer. The Board, like the National Labor Relations Board, has routinely held that the agricultural employees of a cooperative association are not employed by the grower/members, but by the cooperative itself. Bonita Packing Co., Inc. (1978) 4 ALRB No. 96, citing 29 C.F.R. 780.133(a). The cooperative entities certified as employers have generally been involved in packing and processing. As such, they own and operate packing sheds and similar facilities and are highly capitalized. Even though unionization might be expected to raise labor costs to some degree, grower/members would be unlikely to withdraw from membership or vote to dissolve the association, because of the degree of capital investment in the packing or processing operation. In contrast, S&F owned almost no assets, aside from simple picking equipment. It leased most of its expensive personal property from Saticoy. A member could easily

withdraw from the association without entailing significant liability. Alternative sources of harvest labor were readily available. Similarly, the members of S&F were able to vote to dissolve the association without doing any harm to their lemon growing businesses. On the other hand, Saticoy, which is also a cooperative association, and which employs packinghouse workers under the jurisdiction of the National Labor Relations Board,[9/] has experienced relatively little membership loss in recent years. It is the ease with which the grower/members of S&F have been able to remove themselves from the provisions of the collective bargaining agreement between the Union and S&F, while their lemon growing businesses continue as before (with a different harvest labor supply) which has led the Union to argue that S&F, as the sole employer of the harvest employees, cannot provide the stability necessary to a healthy collective bargaining relationship. Designating an employer which can provide such stability has been a constant theme in Board decisions.

Yet, while the Union has repeatedly pointed to the injustice to its members caused by the dissolution of S&F, which it views as nothing more than a clever legal maneuver by the grower/members to decertify the Union, its arguments in support of the proposed unit do not pass muster, either legally or practically. The creation of an unwieldy bargaining unit composed of S&F as well as the packinghouse and the grower/members would serve only to make collective bargaining inordinately complex, without remedying the underlying problem. I do, however, believe that there is available to the Board a partial, workable,

9/ Saticoy Lemon Association (1941) 28 NLRB 1214.

solution to the unique problems caused by the cooperative structure of the harvesting association. I will first consider the parties' arguments concerning the co-employer status of the Employers under traditional NLRB models.

The Union argues that the vertical integration of the lemon industry in Ventura County is so complete that a single, integrated enterprise has been created, which should be deemed the employer of the harvest workers. The Union begins by asserting that the three types of entities: growers, harvest associations, and packinghouse, could not exist without each other. The Employers do not dispute the fact of functional coordination, but accurately contend that this is a necessary, but not a sufficient, prerequisite to a finding of single employer status. In order for nominally separate employers to be treated as a single employer for collective bargaining purposes, the Board has looked to the following factors: interrelation of the operations, common management of business operations, centralized control over labor relations, and common ownership. Abatti Farms, Inc. (1977) 3 ALRB No. 83; and Rivcom Corporation (1979) 5 ALRB No. 55. Typically, in cases of this nature, the nominally separate companies have distinct work forces, although there will usually be some interchange of employees. Here, S&F has a single work force, and Saticoy has no agricultural employees on its payroll. While this set of facts might provide the basis for a finding of joint employer status, it is not a basis for finding that Saticoy and S&F are a single, integrated enterprise.

Nor does the fact that Saticoy and S&F must

necessarily coordinate their functions render them co-employers. Many industries are similarly structured. For example, automobile parts suppliers cannot function without coordinating their work with automobile manufacturers. The manufacturers are customers of the suppliers, have an interest in the quality of the parts supplied, determine when they shall be manufactured and delivered, specify what products they want in an extremely detailed manner, and often send inspectors to the parts supplier's factory. But, they do not therefore become the employers of the workers in that factory. If the UFW's argument were carried to its logical conclusion, then all agricultural employees who work on any phase of the production of a grower's crop must be included in the same bargaining unit, regardless of what employer they work for, and those employers must be deemed a single, integrated enterprise.

It is extremely common in California agriculture for more than one employer to be involved in the production of a crop grown on a particular piece of land. Joint ventures and grower/shipper deals are a fixture in the row crop sector of the industry. The employers involved in these ventures cannot operate without each other. The Union's argument would transform the employers into a single enterprise for collective bargaining purposes, without regard to common ownership, management, or employee interchange. The Board has rejected a similar approach in San Justo Farms, infra.

When the lemon farming employees of S&F's grower/members are considered, it becomes even clearer that there is no single employer present here. These employees are entirely

under the control of the grower/members. They have no contact whatever with either S&F or Saticoy. The mere fact that they work on the same trees as the S&F employees cannot convert their entirely separate employers into co-employers,

The Union also contends that the Employers may be considered as joint employers of the employees in the proposed bargaining unit. While many NLRB cases appear to treat the concept of joint employer as identical to that of single employer, there is an important distinction. Joint employer status may be conferred on two separate businesses, without regard to the presence of common ownership and common management. The critical factor is whether the two businesses possess joint control over the terms and conditions of employment of a single work force. Tanforan Park Food Purveyors Council v. N.L.R.B. (9th Cir. 1981} 656 F.2d 1358. In Tanforan, one of the companies held to be a joint employer carried the bargaining unit employees on its payroll, but the other company was in charge of to the day-to-day supervision of the employees, including hiring and firing.

Both the courts and the Board have been reluctant to hold that two companies are joint employers. In Pulitzer Publishing Co. v. N.L.R.B. (1980) 618 F.2d 1275, the court found that a newspaper publisher was not a joint employer of the employees of a trucking company which delivered the newspapers. The companies had separate management and ownership. Even though there was some functional interrelation of the operations of the two companies, the court found that they operated independently:

> Their operations are not substantially interrelated beyond the extent necessary to the performance of the basic contractual duty . . . to deliver the newspapers. [618 F.2d at 1281.]

The publisher determined when and where the newspapers would be delivered, occasionally directed the truck drivers in their work, and was involved in the selection and compensation of the trucking company's assistant managers who supervised the drivers. Prior to the hiring of the assistant managers, the publisher had supervised the drivers directly and had participated actively in collective bargaining negotiations affecting, them. The court held that, regardless of the nature of the past relationship between the two companies, their deliberate decision to institute changes in that relationship was entitled to recognition.

While the Board has on a number of occasions found two nominally separate businesses to be a single, integrated enterprise for purposes of collective bargaining, it has been very hesitant about conferring joint employer status on two in otherwise distinct companies which both exercise some control over a single work force. The Board has, instead, in each case determined which of two (or more) potential employers has the more substantial labor relations ties to the employees and has deemed it to be the "primary" agricultural employer. Corona College Heights Orange and Lemon Association (1979) 5 ALRB No. 15; and San Justo Farms (1981) 7 ALRB No. 29.

In Corona College Heights, the Board held that a cooperative packinghouse, rather than a cooperative labor association, was the employer of citrus harvesting crews. (No

party contended that the grower/members of either cooperative should be deemed the sole employer or a co-employer of these workers.) In contrast to the facts in the present case, the packinghouse, rather than the harvest association, selected, assigned, and directed the crew foremen in their work. It also represented the interests of its grower/members in making wage-rate adjustments. The harvest employees were on the payroll of the harvest association, and some lived in a labor camp operated by it. On balance, the Board found that the packinghouse had a in more substantial and permanent interest in the ongoing agricultural operation and exercised greater control over the terms and conditions of the harvesters' employment than did the harvest to association.[10]/

In the present case, there is evidence that, like the publisher in Pulitzer, supra, Saticoy at one time exercised substantially more control over the working conditions of the harvest employees than it does now. Whatever the relationship between Saticoy and S&F may have been in the past, it now is substantially the same as that between Saticoy and the other harvest entities.[11]/ The UFW concedes that Saticoy's relationship

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10/In Rivcom, supra, the Board also held that the packinghouse, rather than the harvest entity, was the employer of citrus harvesters. As in Corona College Heights, the packinghouse was deeply involved in selecting the harvest employees and closely supervised them on a daily basis.

11/While the cooperative harvesting associations in Ventura County may have initially been little more than extensions of the packinghouses which created them, they have, over time, become increasingly independent. See New Migrants vs. Old Migrants: Alternative Labor Market Structures in the California Citrus Industry, Monographs in U.S.-Mexican Studies, 9, University of California, San Diego, 1981, which provides a good historical perspective on the citrus industry in Ventura County.

to the harvest employees is limited to its overall control of the timing of the harvest and its interest in quality control. Saticoy is not involved in setting the wages or other terms and conditions of employment for the harvest workers. Nor does it supervise the employees on a daily basis. Saticoy's ties to the harvest workers are not substantial enough for it to be deemed the primary agricultural employer, as it might have once been.

The Board has recently reiterated its preference for the primary agricultural employer concept over the joint employer formulation. In San Justo, supra, a landowner which grew a number of crops, entered into a contract with Vessey Foods, Inc., with respect to the growing of garlic on San Justo's land. Vessey had overall control of the operation, in that it chose the seed, decided when to plant it, planted the seed with its own equipment, dug the garlic and directed when it should be topped. San Justo was responsible for pre-harvest cultural activities. The companies shared supervision over the harvest workers, who were on the Vessey payroll, although many worked for San Justo before and after the harvest. The two companies split profits from the sale of the garlic, which Vessey packed and marketed. On these facts, the Board found that San Justo was the primary agricultural employer of the harvest workers, placing stress on its greater control over their working conditions, supervision, and the amount of interchange. The Board held that this was not an appropriate case in which to deem San Justo and Vessey joint employers of the harvest workers. The Board specifically noted the fact that San Justo grew a number of other crops as a basis for its holding.

Here, the Union is seeking to join the grower/members of S&F, many of whom grow crops other than lemons, with Saticoy and S&F, both of whom are only in the lemon business. Further,

the proposed employers here do not jointly supervise the proposed bargaining unit's workers. Only S&F has a significant interest in the supervision and labor relations policy with respect to the harvest workers. And only the individual grower/members of S&F have any control over the lemon farming employees on their own payrolls. There is simply not enough economic glue to hold this diverse collection of employers and employees together. The only tie between the lemon farming employees of the grower/members and the harvest employees is that they both work in the same lemon groves, albeit at different times. Such a connection has never been sufficient to confer co-employer status on their employers or to place them in the same bargaining unit.

The Union also contends that the Board may order the Employers to bargain on a multiemployer basis. In rejecting this argument, I incorporate the reasoning and conclusions of the Investigative Hearing Examiner in Coastal Growers, at pp. 24-25. also note that, with respect to the lemon farming employees of the grower/members of S&F, there is no history of multiemployer bargaining and no consent on the part of the Employers to such bargaining.

I conclude that, while it is functioning as an on going enterprise, S&F is the primary agricultural employer of the harvest employees, because it has been delegated by its

grower/members all the authority to act as an employer.[12/] Only S&F is in a position to provide uniformity and predictability of working conditions and benefits to the employees while it is in, business. However, the situation changes dramatically whenever a grower/member withdraws from S&F, thereby withdrawing its delegation of labor relations functions, or when the grower/members, acting as a group, vote to dissolve the association, thereby depriving S&F of its authority to act as an agricultural employer. While the Act's definition of employer encompasses the harvesting association as an entity, it does not speak , directly to the situation encountered here.

At the heart of the Act's purposes are those principles enumerated in its preamble:

> SECTION 1. In enacting this legislation the people of the State of California seek to en-sure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations.
>
> This enactment is intended to bring certainty and a sense of fair play to a presently unstable and potentially volatile condition in the state. The Legislature recognizes that no law in itself resolves social injustice and economic dislocations.

What the previous discussion discloses is that, in seeking to implement the mandate of the Legislature, the Board has been preeminently practical in shaping the collective bargaining relationship between employers and the representatives of their

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12/I cannot determine the employer of the lemon farming employees of each of the grower/members on the record before me. I can conclude that neither S&F nor Saticoy employs these workers. They are employees either of the individual growers or of land management companies who perform lemon farming activities for the growers. See discussion concerning the Pro-Ag employees, infra.

employees. It has consistently avoided mechanical application of principles to all factual situations. Instead, it has focused on the realities of collective bargaining in fashioning approaches to the unique and often complex structural relationships present in agriculture.

When the Board held in Bonita Packing, supra, that the employees of cooperative association are employed by the association rather than its members, it was simply acknowledging the reality of the employment situation when the cooperative is operating as an ongoing concern. But, as the Board has noted in other contexts, see Kaplan's Fruit and Produce Co. (1977) 3 ALRB 12 No. 28, certification is not a single, all-purpose concept. While the cooperative association may have the duty to bargain with the certified representative of its employees under normal operating conditions, because decision-making authority with respect to these employees has been delegated to it by its grower/members, the duty must shift back to those grower/members I once they have decided to remove themselves from the association by obtaining harvest labor from another source, whether this occurs as the result of individual withdrawals or a decision to dissolve the association.

S&F contends that its members' decision to end its existence was a standard decision of an employer to go out of business. The Union responds that the effect of this decision was to decertify it and permit the growers to employ a new labor force, while continuing in their business of growing lemons. I agree with the Union that the decision of the members of a non-profit cooperative association to dissolve the association is

not analogous to the decision of a profit-seeking business concern to go out of business. Here, S&F as an entity had no independent financial interest in its own continued existence. It, apart from its members, had no part in the decision which led to its demise. S&F was created solely for the benefit of its members and it was ended solely for their benefit. It had virtually no assets, owned no real property, and had only a handful of managerial employees. The primary effect of the dissolution was to free S&F's grower/members from the increased costs of the certification with the UFW. The grower/members continue to grow lemons and to have them packed by Saticoy. In no sense has any entrepeneurial concern gone out of business as a result of S&F's dissolution. The only entrepeneurial parties in this case are the grower/members.

When a grower/member of a cooperative association decides not to use its labor for harvesting, the cooperative no longer has the authority to bargain with the Union in the name of the grower/member. Whatever bargaining obligations arise from such a decision must attach to the entity with the power to make the decision in the first place. In this case, the grower/member must assume the bargaining obligation once it has removed the authority of the cooperative association to bargain on its behalf. To do otherwise would be utterly inconsistent with the basic purposes of the Act, because only the grower/members have the necessary financial interest in the lemon operation to bargain over individual withdrawals and decisions to dissolve the association.

Although this is not technically a successorship case,

in a sense the grower/members have succeeded to the bargaining obligations of their former association, S&F. The California Supreme Court has recently held, in San Clemente Ranch, Ltd. v. Agricultural Labor Relations Bd. (1981) 29 Cal.3d 874, that federal successorship principles are applicable to cases arising under our Act. In explaining the purpose and significance of the successorship doctrine, the Court quoted with approval from Justice Harlan's decision in John Wiley & Sons v. Livingston (1964) 376 U.S. 543:

> Employees, and the union which represents them, ordinarily do not take part in negotiations leading to a change in corporate ownership. The negotiations will ordinarily not concern the well-being of the employees, whose advantage or disadvantage, potentially great, will inevitably be incidental to the main considerations. The objectives of national labor policy, reflected in established principles of federal law [i.e., the successorship doctrine], require that the rightful prerogatives of owners independently to rearrange their businesses and even eliminate themselves as employers be balanced by some protection to the employees from a sudden change in the employment relationship. (Italics added.)[Id., at p. 549.]

The Court went on to hold that:

> In light of the similarities between the ALRA and NLRA, we have no doubt but that the objectives of state labor policy--as reflected in the ALRA--embody a similar concern that the rights of employers to buy and sell agricultural businesses "be balanced by some protection to the employees from a sudden change in the employment relationship." Thus, we think the ALRB was unquestionably correct in concluding that the ALRA contemplates that under appropriate circumstances an agricultural employer who purchases an on-going agricultural business may be bound by the statutory obligations which the act imposes upon its predecessor. [] [29 C.3d at 885.]

Here, too, there has been a sudden change in the employment relationship in an ongoing agricultural business (the production of lemons) from which the employees are entitled to, some measure of protection. The nature and extent of the bargaining obligation of the grower/member who decides to discontinue using the cooperative association for the harvesting of his crop remains to be determined. When an entrepeneurial concern goes out of business or engages in a partial closure, it may do so without bargaining about the decision with the certified collective bargaining representative of its employees. Textile Workers v. Darlington Co. (1965) 380 U.S. 263; First National Maintenance Corp. v. N.L.R.B. (1981) 101 S.Ct. 2573. But, when an employer decides to contract out bargaining unit work to another company, an action not involving matters at the core of entrepeneurial control, then it must bargain with the collective bargaining representatives of its workers about that decision. Fibreboard Paper Products Corp. v. N.L.R.B. (1964) 379 U.S. 203. The court reasoned in Fibreboard that the decision

> . . . to contract out the . . . work did not alter the Company's basic operation. The . . . work still had to be performed in the plant. No capital investment was contemplated; the Company merely replaced existing employees with those of an independent contractor to do the same work under similar conditions of employment. Therefore, to require the employer to bargain about the matter would not significantly abridge his freedom to manage his business. [379 U.S. at 213.j

Here, the harvesting work must still be performed in the groves of the grower/members. The basic operation of the

Employers has not been altered. The Employers have simply replaced the employees of S&F with other employees. The Employers have an obligation to bargain with the Union about the decision to contract out the harvesting work to other companies and the effects of the decision on the employees of S&F.

An examination of other analogous situations which may occur under the Act will be helpful in placing the limited bargaining obligation of the Employers in perspective and in demonstrating that such an obligation is in harmony with the basic principles of the Act. A lemon grower may obtain harvest workers in three ways other than from a cooperative harvesting association. He may hire his work force directly, he may hire workers through a farm labor contractor, or he may contract with a custom harvester to do the work. If a grower hires harvesters directly, it is clear that he would be obligated to bargain with their certified collective bargaining representative about any decision to contract out their work. Similarly, if the grower employs workers on the payroll of a farm labor contractor, he is deemed to be the employer of those workers. Labor Code §1140.4 (c). While he may decide to terminate the services of the labor contractor, the grower will have to bargain with the certified union about such a decision. Vista Verde Farms v. Agricultural Labor Relations Bd. (1981) 29 Cal.3d 307. in the third situation, the grower could terminate his contract with the custom harvester pursuant to the terms of their agreement. The custom harvester, unlike a cooperative association, has an independent interest in its continued existence and in keeping business. It would be in an arm's length relationship with its customers

and could attempt to negotiate acceptable terms with them. If the grower's primary concern was economic, the custom harvester could approach the certified union of his employees and seek contract concessions. But, in no event could a grower/customer or a group of grower/customers decide that the custom harvester should go out of business. The ability of grower/members of a cooperative association to make such a decision is the crucial distinction between them and the grower/customers of a custom harvester.

In each of these three alternate situations, the union would still have an employer with which to bargain on behalf of its members. In order to ensure that employees of a cooperative harvest association retain their bargaining rights under the Act when grower/members decide to withdraw or dissolve the association, a bargaining obligation must be placed on the actual decision-makers in order to prevent the grower/members from using the cooperative structure as a shield to insulate them from the consequences of their decisions.

B. The Bargaining Unit Issues.

The Employers contend that the proposed bargaining unit violates the express provisions of §1156.2 of the Act: "The bargaining unit shall be all the agricultural employees of an employer." According to the Employers, this simple statutory directive leaves no discretion to the Board to determine the appropriateness of a bargaining unit, but must include all the employees of each of the grower/members of S&F, the other grower/members of Saticoy, and all the other harvest employees of the various harvest organizations which pick the lemons of

the member/growers of Saticoy. If these employees must be part of the bargaining unit, then large numbers of employees were disenfranchised in the election. The non-lemon farming employees of the grower/members of Saticoy and the harvest employees of the grower/members of Saticoy who did not belong to S&F were not permitted to vote.

The UFW argues that Saticoy, S&F, and the grower/members of S&F constitute "an employer" within the meaning of §1156.2. Therefore, the statutory mandate is satisfied by including all the employees of the resulting employer in the bargaining unit. The non-lemon farming employees of the grower/members would be able to organize for bargaining purposes as. the employees of the individual grower/members.

Because I have concluded that Saticoy, S&F, and the grower/members of S&F do not constitute co-employers of the employees of the proposed unit, I am reluctant to decide the merits of the complex bargaining unit issues raised by the parties. Although the Board indicated in San Justo, supra, that the language of §1156.2 does not foreclose the possibility of certifying joint employers of the employees working in a single crop, it has not laid down any guidelines for such certifications. It may well be that part of the Board's reluctance to use the joint employer concept stems from a desire to avoid the bargaining unit implications of such certifications except in cases where there is no satisfactory alternative.

The legislative history cited by the Employers makes it clear that the Legislature opted for "wall-to-wall" bargairing units as the general rule of organization in agriculture.

See Vista Verde v. A.L.R.B., supra. Any departure from that general standard should come, in the first instance, from the Board.

Apart from the Board's legal authority to certify the proposed bargaining unit, the bargaining table realities of the situation militate against such a choice. Assuming that S&F had not been dissolved, both it and Saticoy would be represented at the bargaining table. Saticoy's representatives in negotiations would also be representing the interests of the more than 150 grower/members of Saticoy who do not belong to S&F. These growers would not be bound by the resulting contract, but would be affected by it as competitors for harvest labor and as producers of lemons. That this situation could lead to conflicts of interest among the employer negotiators is obvious.

Because S&F has been dissolved, the former members of S&F and Saticoy would be negotiating the terms and conditions of employment of the employees who harvest the lemons of the former S&F grower/members. But, the harvest organizations who actually employ the workers would not be a party to the negotiations or the contract. Clearly, such a situation would not contribute to stability in labor relations. If a contract were reached, the results would be chaotic for the bargaining unit workers. If a SAMCO crew were harvesting lemons on the property of a former grower/member of S&F, it would be covered by any contract negotiated under the proposed unit. If it moved to the property of another grower later the same day or the following day, and the grower did not belong to S&F, it would work under different

terms and conditions of employment.[13/] In arguing against considering the individual grower/members as the employers of the harvest workers, the UFW states in its post-hearing brief that such a determination "would allow for the capricious result that the employees may work one day under a UFW contract, the next day under a contract of another union, and the following day under no union contract. Such a situation would hinder the collective action of the workers in opposition to the purpose of the Act. Such a unit would be unacceptable and non-feasible [sic]." UFW Post-Hearing Brief at p. 39. The same considerations are present under the proposed unit. A further complication, that grower/members of S&F might withdraw from Saticoy and join

to another packinghouse and harvesting association, which might might not be under a union contract, has not even been addressed by the UFW, although I had asked the parties to consider such an eventuality in their briefs. In conclusion, while I decline to rule on the legality to of the proposed unit if the Employers had been found to constitute a single employer unit, the policy of the Act dictates on against certifying such an unwieldy and inherently unworkable unit.

II. THE SERVICE OF THE PETITION FOR CERTIFICATION ON THE GROWER/MEMBERS OF S&F (ISSUE 1).

The parties stipulated that the UFW personally served the petition for certification on Aurelio Guzman, S&F's Field Superintendent, an admitted supervisor of the S&F harvest

13/SAMCO also harvests lemons which are packed by packinghouses other than Saticoy. The record is silent concerning the labor relations ramifications of this fact.

employees. The UFW then sent mailgrams to each of the grower/members of S&F, advising them of the personal service on Guzman. The Union did not serve personally any of the grower/members. Testimony by a director of S&F indicated that Guzman had not been specifically authorized to accept service as an agent of the grower/members.

Service of petitions for certification is governed by Section 20300(f) of the Board's regulations:

> (f) . . . Service on the employer may be accomplished by service upon any owner, officer, or director of the employer, or by leaving a copy at an office of the employer with a person apparently in charge of the office or other responsible person, or by personal service upon a supervisor of employees covered by the petition for certification. If service is made by delivering a copy of the petition to anyone other than an owner, officer, or director of the employer, the petitioner shall immediately send a telegram to the owner, officer, or director of the employer declaring that a certification petition is being filed and stating the name and location of the person actually served.

It appears that the basic design of the foregoing provision is to require personal service of the petition on some responsible, accessible, agent of the employer, together with a confirming telegram to assure actual notice to the employer. I find that the method employed by the UFW constitutes valid service on the grower/members of S&F insofar as the harvest employees are concerned, but not with respect to the lemon farming employees of the individual grower/members.

It is clear that Guzman was a supervisor of the harvest employees. It is equally clear that the grower/members had delegated their control over labor relations matters with

respect to the harvest employees to S&F. As such, S&F was the designated labor relations agent for the grower/members with respact to the lemon harvest workers. Whether Guzman had been specifically authorized to accept service is irrelevant under the regulatory scheme. Labor Code §1165.4 also makes it clear that actual authorization of agents is not controlling.[14/]

With respect to the non-harvest lemon f arming-employees, the situation is quite different. S&F was solely concerned with the harvest of its members' lemons. It was totally uninvolved with the pre-harvest activities of the growers. Aurelio Guzman was not a supervisor of any of the non-harvest workers. Nor can S&F reasonably be viewed as an agent of its grower/members outside of its harvest function. While Guzman was literally a supervisor of some of the employees covered by the petition, such a reading of Section 20300(f) would not provide for personal service on any agent of the grower/members. The UFW apparently recognized the underlying policy of the regulation by personally serving Saticoy, although a literal reading would not have required it. Guzman had no more connection with the lemon farming employees of the grower/members than he had with their employees who worked in other crops.

In sum, I conclude that the UFW properly served the petition for certification on the grower/members with respect to the harvest employees, but not with respect to their lemon farming employees.

14/The grower/members do not contend that mailgrams are not telegrams within the meaning of Section 20300(f).

III. THE ISSUE OF SATICOY'S NOTICE OF THE ELECTION (ISSUE 2).

The UFW, Saticoy, and the Board's Oxnard Regional Director stipulated that:

> On Thursday morning, May 28, 1981, at approximately 9:30 a.m., Regional Director Wayne Smith telephoned Gordon, Glade & Marrs, attorneys for Saticoy Lemon Association (hereafter Saticoy), and informed them that the Board had made a ruling granting the UFW's request for review, ordering that an investigation be conducted for an election, and ordering that the ballots be impounded.
>
> Smith read the Board's order over the telephone to Messrs. Gordon and Marrs and the order was transcribed by Mr. Gordon's secretary.
>
> Smith also informed Messrs. Gordon and Marrs of a meeting to be held that same evening in the Oxnard ALRB office to discuss the Board's order.
>
> On Thursday, May 28th, at approximately 5:30 p.m., a meeting was held at the Oxnard ALRB office which was attended by various representatives of S & F Growers Association (hereafter S & F), it's member-growers, the UFW, and Messrs. Gordon and Marrs on behalf of Saticoy.
>
> During this meeting, Smith read a "Clarification of Order Directing Election" and requested the several parties including Saticoy to complete certain responsibilities by 5:00 p.m. of the following day (Friday, May 29th) so that the adequacy of petitioner's showing of support could promptly be determined as required by ALRB Regulation Section 20300(j)[2].
>
> In addition to Saticoy and S & F, the nominal employers included approximately 81 entities.
>
> On Friday afternoon, May 29th, Mr. Glade hand-delivered to Regional Director Smith at the Oxnard ALRB office Saticoy's response which Smith had requested during the previous evening's meeting.

At approximately 8:30 p.m. on Friday, May 29th, Regional Director Smith determined that an adequate showing of interest had been presented by the UFW.

No representatives of Saticoy were present when this determination was made although attorneys and other representatives were on hand for S & F and various grower-members.

Following the determination, no ALRB representative contacted Saticoy to inform it that the showing of interest had been determined or that the pre-election conference would be held immediately or that an election was to be held the next day.

Smith convened a pre-election conference at about 9:00 p.m. and at which an election was directed for "all the agricultural employees of S & F Growers Association engaged in harvesting the lemon crop of grower-members of the Association" for Saturday, May 30th.

No Saticoy representative attended the pre-election conference and no ALRB representative contacted Saticoy either after the pre-election conference or on May 30th.

On Saturday, May 30th, an election was conducted for agricultural employees on the payroll of S & F.

On Monday, June 1, 1981, at approximately to 2:00 p.m., Newman Strawbridge, an ALRB agent, informed Saticoy's attorney, Mr. Gordon, that an election would be held Wednesday, June 3, 1981, and that a pre-election conference would be held at 5:30 p.m. that evening (Monday) at the ALRB office in Oxnard.

During this conversation, Strawbridge also advised Gordon of the election that had already been conducted on Saturday, May 30th, 1981

Mr. Glade did attend the pre-election conference on behalf of Saticoy and Pro-Ag on the evening of June 1 at the ALRB office and did receive at that time the Notice and Direction of Election set for June 3.

At no time relevant to the facts herein did Saticoy or its attorneys, Gordon, Glade and Marrs represent S & F.

[Tr. Vol. I, P. 12, L. 15 through P. 14, L. 24.]

In addition to the stipulation, Wayne Smith, the Board's Regional Director, testified that he held a meeting with the parties in this matter on May 28, at which he explained that he would conduct a pre-election conference on May 30, if he determined that the UFW had made out a showing of interest. He did not specifically direct an election to be held at this meeting. William Marrs, an attorney for Saticoy, testified that he was present at the meeting on May 28, but did not hear Smith mention that he was planning to hold a pre-election conference two days later. I find that both witnesses testified credibly. There were times during the meeting when Smith was primarily addressing representatives of S&F. Apparently, S&F learned Smith's intentions, while Saticoy did not, Because I have concluded that Saticoy is not a co-employer of any of the agricultural employees included in the proposed bargaining unit, I need not determine whether the Board's failure to notify it of the May 30 election would require the election to be set aside. However, if the Board were to conclude that Saticoy is an agricultural employer of the employees in the proposed unit, I would conclude that the failure of the Board to notify it of the election would not be grounds for setting the election aside.

While an employer is entitled to notice that an election will take place, Labor Code §1156.3(a), the Board has held that a failure to notify will not always result in a decision not to certify election results. Carl Joseph Maggio, Inc.

(1976) 2 ALRB No. 9. Here, the employees who voted on May 30 were all on the S&F payroll. Only S&F, which did have observers present, was in a position to challenge ineligible voters. S&F was also able to monitor the conduct of the election. In Maggio, two Board members held that the employer's objection should be dismissed, because the lack of notice had not disadvantaged it. Member Grodin concurred, relying on the considerations noted above, as well as his determination that the failure to notify was attributable solely to simple negligence. Here, too, the Regional Director's regrettable failure to notify, Saticoy was the result of negligence on his part, which, in turn, is attributable to the considerable confusion surrounding to the decision to order the election in the first place.

IV. THE CONTRACT BAR ISSUE (ISSUE 12).

The Employers contend that the petition must be dismissed because it is in violation of §1156.7(b) of the Act, which provides that a collective bargaining agreement between an employer and a labor organization shall bar a petition for an election among such employees for a period not to exceed three years. The parties have made a number of arguments concerning the applicability of the contract bar to the current petition. However, none of the parties seems to have noticed that the petition in this matter was filed on May 20, 1981, more than three years after the effective date of the contract, May 19, 1978. I conclude that the petition for certification is not barred by the provisions of §1156.7(b) of the Act. I therefore decline to consider the arguments of the parties concerning the construction and interpretation of the contract bar language.

V. THE CERTIFICATION BAR ISSUE (ISSUE 11).

Section 1156,3(a)(3) requires a union petitioning for a representation election to allege that no labor organization is "currently certified as the exclusive collective-bargaining representative of the agricultural employees of the employer named in the petition." Section 1156.6 specifies that no election may be directed in any bargaining unit in which a certification has issued in the past year.

At the time the petition was filed, the UFW was the exclusive bargaining representative of the employees of S&F. It had attempted through a unit clarification petition to have the individual grower/members of S&F included as employers in the certification. The Board denied the Union's petition in Coastal Growers. In its decision, the Board declined to decide whether due process would prevent the naming of the grower/members as employers, inasmuch as they had not been served with the original petition for certification in 1977.

It is clear that the certification bar provisions of the Act are not applicable to the present petition. First, the petition names an employer different from the employer certified by the Board. Second, there may be no other procedure available to the Union to impose upon the grower/members a limited bargaining obligation as proposed in this decision. Should the Board rule on reconsideration in Coastal Growers that the grower/members may not be named as employers because they were not served with the petition for certification, then only a new election can remedy the defect. Third, the statute clearly limits the certification bar to a 12-month period. While the

Act must contemplate that the certification bar will most often be used to block early challenges to the certified union by o rival unions or decertification proponents, the procedure employed by the Union here is certainly not violative of the certification bar provisions. Obviously, the Union would not petition for a new election in a unit where it was already certified. Here, the Union changed both the designated employer and the employees to be included in the unit. I conclude that the petition for certification is not barred by the certification bar provisions of the Act.

VI. THE STATUS OF THE THREE PRO-AC EMPLOYEES (ISSUE 871

During the eligibility period for the election, three employees of Pro-Ag, Inc., a land management firm, worked on the property of Dr. Hillary Ling, a grower/member of S&F, pursuant to a contract between Dr. Ling and Pro-Ag. The contract provided that Pro-Ag would perform all necessary cultural practices in Dr. Ling's lemon grove. The three employees voted challenged ballots at the election. They were apparently included in Paragraph of the Board's order directing an election, because they were admittedly agricultural employees engaged in lemon farming for a member/grower of S&F.

The UFW does not seriously dispute the fact that the three employees were employed by Pro-Ag, rather than by Dr. Ling. The agreement provides for Pro-Ag to supervise the employees, as well as make all necessary management decisions involved in the non-harvest activities on the property. Pro-Ag, and not Dr. Ling, sets the terms and conditions of employment

of the employees. Pro-Ag has similar contracts with a number of growers and employs 36 agricultural employees in Ventura County. Under the contract, Pro-Ag is reimbursed on a cost-plus management fee basis. It is expressly compensated for exercising managerial judgment. Dr. Ling has no direct contact with the employees of Pro-Ag. Board precedent is clear that Pro-Ag is the employer of the three employees. Jack Stowells, Jr. (1977) 3 ALRB No. 93.

The UFW argues that Pro-Ag's employees should be included in the bargaining unit because they do not work in a vacuum. That is, the cultural practices which they perform must be timed so as not to interfere with the harvesting of the lemons carried out by S&F when Saticoy determines. No NLRB or Board precedent is cited in support of this proposition. If the UFW's argument is carried to its logical conclusion, then all agricultural employees who work on any production phase of a grower's crop should be included in the same bargaining unit. As I have already concluded that the lemon farming employees of the grower/members of S&F were not properly joined with the harvest employees in the proposed unit, it is clear that Pro-Ag's employees must similarly be excluded.[15/]

RECOMMENDATION

If the Board, in its reconsideration of Coastal Growers, decides that the UFW's failure to serve the grower/

15/If Pro-Ag's employees are to be included in the unit, serious due process issues would be raised, inasmuch as Pro-Ag was not named as an employer in the petition for certification. There are bargaining unit implications present as well, because not all of Pro-Ag's lemon farming employees would be included in the proposed unit.

members of S&F in the 1977 election proceeding does not constitute a due process barrier to imposing a limited bargaining obligation on the grower/members along the lines proposed in this decision, then I recommend that the 1981 petition for certification be dismissed as redundant. If, on the other hand, due process considerations preclude imposing such a bargaining obligation on the member/growers under the present certification, then I recommend that the ballots cast by the agricultural employees of S&F be opened and counted. If a majority of the votes were cast for the UFW, then I recommend that it be certified as the exclusive collective bargaining representative for all the agricultural employees of S&F in the State of California, and that to the grower/members of S&F be required to bargain with the UFW about decisions to withdraw from, or dissolve, S&F, as set out more fully in this decision.

Dated: January 4, 1982

AGRICULTURAL LABOR RELATIONS BOARD

By _____
Joel Gomberg
Investigative Hearing Examiner