STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

MAYFAIR PACKING COMPANY, Employer, and MATIAS GUERRERO, MANUEL MARTINES, Petitioners, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Certified Bargaining Representative.	)	Case No. 83-RD-1-D 9 ALRB No. 66

DECISION ON CHALLENGED BALLOTS

On June 10, 1983,[1/] Matias Guerrero and Manuel Martines (Petitioners) filed a Petition for Decertification of the United Farm Workers of America, AFL-CIO (UFW) as the exclusive representative of all the agricultural employees in Tulare County of Mayfair Packing Company (Employer). This petition was filed pursuant to Labor Code section 1156.3(a)[2/] of the Agricultural Labor Relations Act (Act). (See Cattle Valley Farms (1982) 8 ALRB No. 24.)

On August 4, a decertification election was conducted among the agricultural employees in Tulare County of the Employer. The official Tally of Ballots served upon the parties revealed the

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[1/] All dates are 1983, unless otherwise stated.

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

following results:

UFW	9
No Union	8
Challenged Ballots	22
Total	39

As the challenged ballots were sufficient to determine the outcome of the election, the Regional Director (RD) conducted an investigation and issued his Report on Challenged Ballots on September 7. The Employer and the UFW timely filed exceptions to the RD's report and accompanying briefs.

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

Thirteen voters were challenged by Board agents conducting this election because their names were not on the list of eligible voters. The UFW has excepted to the RD's recommendation as to 12 of these challenges.[3/]

The UFW does not assert that any of the twelve individuals worked during the applicable payroll period or were otherwise eligible to vote. Therefore, the RD's recommendation will be adopted.

Three voters were challenged as being supervisors. The RD found that one employee, David Quintanilla, was a supervisory

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[3/] Specifically, the UFW excepted to sustaining the challenges to the following voters: Maria Alahoj, Elida De Leon, Humberto De Leon, Elisa Fuentez, Maria Magana, Cruz Sanchez Mejia, Rigoberto Mercado, Raquel Quiroz, Mary Eloisa Rodriguez, Aurelia Ramos Sanchez, Juan Sandoval and Teresa R. Sastre. No exception was taken to the RD's recommendations to sustain the challenge to Longinos Gonzalez. Accordingly, the RD's recommendation is adopted and the challenge is sustained. (Cal. Admin. Code, tit. 8, § 20363.)

employee as defined by section 1140.4(j) of the Act, and hence ineligible to vote. Matias Guerrero and Manuel Martines were found by the RD not to be supervisors, and hence eligible voters. Both the UFW and the Employer take exception to the RD's conclusions here.

David Quintanilla. The RD determined that Quintanilla was a statutory supervisor because he could effectively discipline or recommend discipline of his co-workers. Discipline was actually issued by another, on Quintanilla's recommendation. The RD additionally relied on the fact that Quintanilla kept the time for co-workers, distributed paychecks, drove a company truck, and was paid at a higher rate.

The Employer argues that Quintanilla's payroll and paycheck duties were merely clerical and that the declaration of Arlan Knutson contradicts the RD's findings.

The Act defines the term "supervisor" as meaning:

> ... any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.
> (§ 1140.4(j).)

The declaration of Arlan Knutson does not contradict the RD's conclusion that Quintanilla was not eligible to vote. We find, in agreement with the RD, that Quintanilla possessed most of the secondary indicia of supervision (see, e.g., Dave Walsh Company (1978) 4 ALRB No. 84) and no evidence shows that the primary indicia

are merely clerical in nature. We therefore adopt the RD's recommendation and sustain the challenge to this ballot.

Matias Guerrero and Manuel Martines. Guerrero worked as a mechanic and Martines as a mechanic's assistant. Neither supervised nor hired or fired any other employee. The RD stated that neither exhibited any secondary indicia of supervisory status, except that Guerrero and Martines have at times relayed orders to other employees when working on equipment assigned to those employees.

The declarations provided by the UFW do not contradict the RD's findings here and those findings are therefore affirmed.

Willis Freeman was challenged by the UFW on the grounds that he had been hired for the primary purpose of voting in the election. (See § 1154.6.)[4/] The RD concluded that Freeman was hired close in time to the decertification election over several other applicants because of his qualifications and experience, not for the purpose of voting in the election.

The UFW objections are not supported by any documentary evidence as is required by the Board's regulations (see Cal. Admin. Code, tit. 8, § 20363(b)). Mere conclusory statements are insufficient to overrule the RD's findings. (Miranda Mushroom Farms (1980) 6 ALRB No. 22 at pp. 7-8.)

Five voters were challenged by the UFW for not being in the appropriate unit. These employees all worked at Prune Tree

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[4/] Guy Smith was also challenged for this reason but no exceptions were filed to the RD's recommended dismissal of this challenge. Accordingly, the RD's recommendation is adopted and the challenge is dismissed.

Ranch. The RD concluded that Prune Tree Ranch, Mayfair Packing and the UFW treated, for bargaining purposes, Prune Tree and Mayfair as separate units. The RD's investigation showed that, for election purposes, a single unit was appropriate. He therefore overruled the challenges and recommended the votes be tallied.

The RD relied on the following indications to find that Prune Tree Ranch employees were eligible voters: managers for both Prune Tree Ranch and Mayfair Packing report to James S. Melehan in Mayfair's San Jose office, labor relations policy has been handled jointly, all the land parcels are within a ten-mile radius, payroll records for both are processed through Mayfair's San Jose office, time cards for Prune Tree are processed through Mayfair's office in Cotton Center, accounts payable and receivable for Prune Tree are handled through Mayfair's office, equipment is exchanged, repairs for both operations are performed by Mayfair, the crops are the same, the wages and working conditions are identical, and the same negotiator represents both for collective bargaining.

As a general rule, the bargaining unit in which a decertification election is held must be coextensive with the unit previously certified. (See, e.g., W. T. Grant Co. (1969) 179 NLRB 670 [72 LRRM 1434]; Food Fair Stores, Inc. (1973) 204 NLRB 75 [83 LRRM 1257]; Scott Paper Co. (1981) 257 NLRB 700 [107 LRRM 1594]. See also Sheraton-Kauai Corp. v. NLRB (9th Cir. 1970) 429 F.2d 1352, 1356 fn. 5 [74 LRRM 2933, 2935 fn. 5]; An Outline of Law and Procedure in Representation Cases, Office of the General Counsel, National Labor Relations Board (1974) pp. 65-67.)

While we are prepared to admit that deviation from this

general rule may be warranted under the appropriate circumstances, the declarations from the UFW here do not present sufficient indications that Prune Tree Ranch has been or should be treated as a separate entity and its employees excluded from the bargaining unit. Accordingly, the RD's report is adopted. The RD's other concerns regarding the scope of this unit will be considered in the analysis of pending election objections, if necessary.

The Regional Director is hereby directed to open and count the ballots of Willis Freeman, Guadalupe Garcia, Raul Garcia, Victor Garcia, Matias Guerrero, Manuel Martines, Guy Smith, and Armando M. Torres, and thereafter prepare and serve on the parties a revised Tally of Ballots. The other challenges are sustained.

Dated: November 16, 1983

ALFRED H. SONG, Chairman

JOHN P. McCARTHY, Member

JEROME R. WALDIE, Member

CASE SUMMARY

Mayfair Packing Company
(Matias Guerrero and
Manuel Martines)

9 ALRB No. 66
Case No. 83-RD-1-D

REGIONAL DIRECTOR'S REPORT ON CHALLENGED BALLOTS

On August 4, 1983, a decertification election was held with the following result:

UFW	9
No Union	8
Challenged Ballots	22

The Delano Regional Director (RD) investigated the 22 challenged ballots and concluded that 14 should be sustained and 8 ballots opened and tallied. Specifically, the RD found that 13 of the challenged voters had not worked during applicable payroll period or were otherwise shown to be eligible voters, and one voter was a statutory supervisor and hence ineligible to vote. He further recommended overruling the challenges to those employees who were employed at Prune Tree Ranch during the appropriate payroll period. The RD's investigation disclosed that Prune Tree Ranch was part of the original certified unit for collective bargaining and that, while the parties had recognized certain changes in the status of Prune Tree Ranch, it and Mayfair Packing were sufficiently intertwined so as to conclude that both entities should be combined for purposes of the decertification election. The RD's investigation disclosed, however, certain portions of the original unit that were not given notice of the decertification election and he raised certain concerns regarding those potential voters. Finally, the RD found that two voters had not been hired for the purpose of voting in the decertification election. Both the Employer and the UFW filed objections to the RD's report.

BOARD DECISION

The Board adopted the recommendation of the RD and ordered that 8 ballots be opened and tallied and a new Tally of Ballots be served on the parties.

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	
MAYFAIR PACKING COMPANY,	83-RD-1-D
Employer,	
and	REGIONAL DIRECTOR'S REPORT ON CHALLENGED BALLOTS.
MANUEL MARTINEZ	
Petitioner,	
and	
UNITED FARM WORKERS OF AMERICA, AFL-CIO,	
Certified Bargaining Representative.	

On August 4, 1983, a secret ballot decertification election was conducted in the above-captioned case among the agricultural employees of the Employer under the supervision of the Agricultural Labor Relations Board, herein called the Board, pursuant to a Notice and Direction of Election issued by the Regional Director on August 2, 1983. The results of the election were:

United Farm Workers Workers of America	9
No Union	8
Challenged Ballots	22

Inasmuch as the challenged ballots are determinative of the results of the election, the Regional Director, pursuant to Board Regulations §20390(c) and §20363(a), conducted an investigation into the challenges. As a result of the investigation, the

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following conclusions and recommendations are made.

A. Challenges For Not Being on The Eligibility List.

The following voters were automatically challenged by the ALRB because their names did not appear on the eligibility list:

NAME	S.S.#	SENIORITY RANKING	LAST DAY WORKED
Humberto De Leon	564-04-1289	12	3-9-83
Elida De Leon	567-04-1435	13	3-9-83
Cruz Sanchez Mejia	572-02-8110	14	2-17-83
Elisa Fuentez	560-02-8872	15	3-9-83
Aurelia Ramos Sanchez	572-98-9148	16	3-9-83
Mary Eloisa Rodriguez	567-04-1214	21	2-16-83
Teresa R. Sastre	570-49-2581	24	2-16-83
Juan Sandoval	755-72-1339	26	1-17-83
Raquel Quiroz	553-35-0077	27	2-16-83
Rigoberto Mercado	566-57-1824	28	2-16-83
Longinos Gonzalez	454-54-1796	0	2-5-82

All of the above employees, with the exception of Longinos Gonzalez, appear on the April 5, 1983, Mayfair Packing Company seniority list. The above chart gives their seniority ranking and their last day of work prior to the payroll period June 3 through June 9th. None of the above eleven persons appear on the eligibility list. Longinos Gonzalez' last day of work was February 5, 1982. On July 12, 1982, the company recalled him back to work. Due to the fact that Mr. Gonzalez did not report to work, he was terminated by the company effective July 16, 1982.

As to the above-listed voters, there is no dispute that they were not working for Mayfair during the eligibility period, which

was June 3 to June 9, 1983. Many of the above sent telegrams to the Board, complaining about the challenges to their votes, and demanding that their ballots be counted. These workers, and the UFW, claim that the election took place at a time when the peak employment requirement was not present. They claim that, had the election taken place at a time when 50% peak was present, that they would have been working, and would have had their names appear on the eligibility list. The UFW also claims that the company manipulated the recall of workers and the operations at work in order to avoid having to rehire known UFW supporters so that they would not be around to vote in the election, thus manipulating peak.

The original petition for decertification was filed with the Delano ALRB Office on June 10, 1983. Immediately thereafter, the Regional Director conducted an investigation to determine whether a bona fide question of representation had been raised. See Labor Code §1142(b). The Regional Director concluded that the decertification petition had indeed been filed at a time when the number of agricultural employees was less than 50% of Mayfair's peak agricultural employment. He therefore dismissed the decertification petition by letter to all parties dated June 16, 1983.

By telegram dated July 25, 1983, the Board, through Executive Secretary Janet Vining, reversed the Regional Director's determination of peak and noted that the parties may file post election objections alleging that peak was not met. In light of the fact that the Board has ruled on this issue, the Regional

Director, with the exception of the ballot of Longinos Gonzalez, believes that he is bound by the Board's ruling.

The evidence gathered in connection with this report indicates that the recall of workers was done strictly by seniority, and from a list formulated by the union and the employer. However, the UFW's claims regarding manipulation go much deeper than this superficial observation. It alleges a scheme by Mayfair to undermine the UFW and to initiate and promote a decertification. The UFW has filed objections based on these issues. The investigation on the related unfair labor practices is near completion, and there is some evidence to substantiate the union's claims. These issues may be litigated at an election objections hearing, and it is recommended that they be consolidated with any related unfair labor practice complaint filed by the General Counsel, if any. However, the Board, having reversed the Regional Director's ruling on peak, I must recommend that the challenges to these ballots not be counted. If, at the hearing, peak is proven not to have been met, then the whole election will be set aside.

The same analysis and recommendations are made with regard to two additional ballots, challenged because the voters' names were not on the list, namely those of Maria DeLaLuz Magana and Maria Alahoj. In addition to claiming that they would have been entitled to vote if the election had taken place during the proper peak period, these employees were on maternity leaves of absence. Neither was working during the eligibility period.

Maria Magana began working for Mayfair on about March 22, 1978, and appears as number 9 on the seniority list, which is

the fifth highest seniority rating of all the General Labor classification employees. Her technical classification is General Labor/ Sweeper Operator.

On February 15, 1983, she asked for, and received, a maternity leave of absence. It was anticipated that her child would be due sometime in April. However, she has not been recalled to work by the company.

Maria Alahoj began working for Mayfair on September 16, 1980, as a General Laborer. She is number 23 on the seniority list, and has the 13th highest seniority rating of all the General Labor Classification.

On November 3, 1982, Maria Alahoj was laid-off due to lack of work. On January 10, 1983, she requested and received a maternity leave of absence. It was anticipated that her baby would also be due sometime in April, 1983. She, too, has not been recalled by the company.

The employer claims that Magana and Alahoj would not have been employed during the relevant payroll period, even if they had not been on pregnancy leaves, because there was no work available. It adds that the least senior employee in their job classification during the relevant period had more seniority than either of these two voters. A review of the company's payroll records for June 3 to June 9, 1983, indicated that the least senior General Laborer/Sweeper Operator was Emelia Mitchell who has a seniority date of September 26, 1977, and ranks number 4 on the seniority list. The company therefore claims that these last two challenged voters' positions are indistinguishable from the others who did not appear on the list. The Regional Director concurs.

The UFW and these voters do not claim, however, that the seniority list was not followed. They dispute the claim of unavailability of work and state that the company has manipulated peak in order to facilitate a decertification drive. The recommendation as to these, therefore, is identical to the one regarding the other group of voters, i.e., to sustain the challenges.

The evidence gathered with respect to the eligibility of Longinos Gonzalez, indicates that he was terminated by Mayfair on July 16, 1982, for failure to report to work pursuant to a letter of recall. The letter and the timecard provided by the company to the Board show that Gonzalez had not been an employee of Mayfair for more than a year before the filing of the petition. Therefore, it is recommended that the challenge to his ballot be sustained.

B. Challenges as Supervisors.

David Quintanilla, Manuel Martinez, and Matias Guerrero were challenged by the UFW as ineligible to vote because they are supervisors within the meaning of the ALRA. Manuel Martinez and Matias Guerrero were the two persons instrumental in circulating and filing the decertification petition.

Section 1140.4(j) of the Act states:

> "The term "supervisor" means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

Likewise, the NLRA's definition of "supervisor", at section 2(11)

is identical to that of the ALRA's.

Recently, in Big Rivers Electric Corporation (1983), 266 NLRB No. 72; 112 LRRM 1369, the NLRB interpreted the definition of supervisor to be read in the disjunctive. Therefore, the existence of any one of the statutory criteria listed, regardless of the frequency of its use,will support a finding of supervisory status. In Big Rivers, the Board found that one of these criteria - use of independent judgment in directing employees - was sufficient to render them supervisors.

The ALRB has found supervisors to include persons who are regarded by other employees as supervisors, check work performed by other employees, exercised independent judgment in making work assignments, and had the ability to effectively recommend hiring and discharge. Rod McLellan Co., 4 ALRB No. 22. In that same case, the Board found another employee to be a supervisor upon evidence that he exercised independent judgment in directing truck drivers and, on one occasion effected the discharge of a worker.

Further, the Board held in Karahadian & Sons, Inc., 5 ALRB No. 19, that an individual's belief that he or she is a supervisor is evidence of supervisory status. See also Foster Poultry Farms, 6 ALRB No. 15.

1. David Quintanilla

There were six employees working at Mayfair's Plainview Ranch during the eligibility period. One of these six was David Quintanilla, whom the company claims is merely a "working foreman".

When Mr. Quintanilla voted on August 4, 1983, he

stated to Board agents that he directed the work performed by the other employees, and, that if a person was not doing their work properly, he could issue them a disciplinary slip. Mr. Quintanilla does not actually sign the disciplinary notices that are issued to the workers. Instead, if he views the workers' lack of proper performance as serious enough to warrant discipline after having tried to correct it by speaking to the workers, he approaches Arlan Knutson, his supervisor, and recommends that discipline (warning, etc.) be imposed. Arlan Knutson signs the disciplinary notice and Quintanilla gives it to the appropriate worker. Knutson does not independently verify the lack of proper performance, and relies on Quintanilla in most cases.

Quantanilla also keeps the other employees' time for payroll purposes, turns it into the office, and issues workers their paychecks. He, unlike the rank-in-file, drives a company pickup on occasions and is paid more than the others.

In view of the above facts, and given Quintanilla's effective recommendatory power to discipline, and his apparent authority to do the same, it is found that he is a statutory supervisor within the meaning of the ALRA. See also Vista Verde Farms v. Agricultural Labor Relations Board, 29 Cal. 3d 307 (1981). The challenge to his ballot should be sustained.

2. Manuel Martinez

Mr. Martinez is classified as a Mechanic's Assistant. His immediate supervisor is Emilio Vasquez. Mr. Martinez cannot hire or fire nor can he effectively recommend so. His pay is $4.90 an hour. His job duties consist of repairing and servicing the farm equipment either at the shop or in the fields. He drives the service truck or the shop pickup during the work day. He is a dues

paying member in good standing with the union.

Interviews with numerous Mayfair employees indicated that Manuel was just another worker like them; the only thing that had recently set him apart from other workers was the fact that he had filed the decertification petition and that they felt that in some way he now represented them.

The UFW alleged that in Mr. Martinez's prior employment at the DiGreco Bleacher (owned by management person of Mayfair Lamar Hart and his wife Geneva), that Martinez had been a supervisor and that this supervisorial image had accompanied him to Mayfair. During interviews with DiGreco employees who had worked with Martinez in 1982, no hard evidence was found to substantiate the union's allegation, except to say that Martinez occupied a "special position" with management at the bleacher. However, there is no evidence that his duties at Mayfair bore any similarily even to those he had at the bleacher.

It is found, therefore, that Manuel Martinez is not a supervisor, and I recommend that the challenge to his ballot on this ground be overruled, and his ballot be counted.

3. Matias Guerrero

Guerrero is classified as a mechanic, and earns $6.20 an hour. There are two mechanic assistants, but do not report to him. They, like Matias, report directly to Emilio Vasquez, a company supervisor.

All of the hiring at the company is done by Arlan Knutsen pursuant to established procedures. Matias cannot hire or discharge workers, nor can he effectively recommend such action. According to the two assistant mechanics, Matias did not give them orders, and the only times he would give them directions was

when they asked him questions about how to fix a piece of equipment. Matias stated that, from time to time, he would relay Emilio Vasquez's orders to workers when he (Matias) would be working on a piece of equipment assigned to those workers. In such instances, Matias would state to them that Emilio had said to do this or do that.

Matias is a dues paying member in good standing with the UFW. He drives the company shop pickup or service truck during the work day as part of his duties. He also operates the fork lift when necessary.

None of the above factors, including Matias' relaying of orders involve his use of independent judgment in performing a duty associated with supervisory status. Even the assistants do not consider him to be a supervisor. There is no evidence that Matias Guerrero has any other indicia that would render him a supervisor within the meaning of the Act. Accordingly, it must be concluded that he is not a supervisors, that the challenge to his ballot be overruled, and his vote be counted.

C. Challenges On The Basis of Having Been Hired for The Purpose of Voting in The Election in Violation of Section 1154.6 of The Act.

The ballots of Guy Smith and Willis Freeman were challenged by the UFW on the allegation that the company had hired them for the purpose of voting in an anticipated decertification election. When each person was hired, it is alleged, there were bargaining unit members on layoff who potentially could have performed these jobs.

Guy Smith was hired to work on the Prunetree Ranch

on October 7, 1982, as a general laborer (decertification petition filed on June 10, 1983). Willis Freeman was hired on May 13, 1983, as an irrigator to work on the Plainview Ranch. Each of these two ranches or departments has its own seniority list that was formulated with the assistance of the union.

Prior to Smith's date of hire in October of 1982, the job had been posted and applications were taken. None of the General Labor Classification employees on the Mayfair list (as opposed to the Prunetree list) who were on layoff applied for the job. When Smith was hired, all of the persons on the Prunetree seniority list were working. Out of those persons that did apply, Smith had the best qualifications. The evidence that Smith was hired for the purpose alleged by the union is far outweighed by evidence to the contrary.

With regard to Willis Freeman, however, the conclusion is not as easily reached. Freeman was hired at a time closer to the decertification election, and at about the time that the decertification campaign began to involve workers at Mayfair. When Freeman applied for his job, there were several applicants competing against him. But Freeman was hired ahead of everyone else. At the time, there were Mayfair employees on layoff, who may have been able to do the job.

Nevertheless, the evidence provided by the employer leads to the conclusion that Freeman was hired primarily because of his superior skills. The opening which he filled had been posted, and applications were solicited. Those applications were made available to the Board for review. From these, it can be seen that none of the laid-off employees applied for the job.

An examination of those applications indicates that, of all the applicants, Freeman was the only one who had any experience in irrigation. Additionally, the other work experience of Freeman placed him above all the other applicants. Based on the foregoing, it cannot be concluded that Willis Freeman was hired in violation of Labor Code section 1154.6. Therefore, it is recommended that the challenge to his ballot be overruled and that his vote be counted.

D. Challenges for Not Being In The Unit.

The UFW challenged the ballots of five voters - Guadalupe Garcia, Raul Garcia, Victor Garcia, Armando M. Torres, and Guy Smith*/ as not being within the appropriate unit. All five are employees of the Prunetree Ranch, which the union claims is not within the unit. A review of the background puts the issue into perspective.

The certification in question is based on case number 78-RC-2-D, which was issued pursuant to a representation election held on August 2, 1978. The people who voted in that election included the Prunetree Ranch employees, employees of the walnut bleacher in Farmersville, employees of a dehydrator for nuts in Cotton Center, employees for a dehydrator plant for nuts and prunes in Farmersville, and employees of Mayfair's Plainview Ranch. When the certification issued, these units were all lumped into one, and the UFW was certified as the representative of all the agricultural employees of "Mayfair" in Tulare County. The certification issued on or about April 2, 1979.

The UFW states that, after this certification, at a negotiations meeting with Mayfair in April, 1979, Mayfair informed

* Guy Smith was also challenged as having been hired for the purpose of

the UFW that it (employer) was taking the position that Prunetree Ranch, the walnut bleacher in Farmersville, the dehydrator for nuts in Cotton Center and the dehydrator for nuts and prunes in Farmersville were not in the certified unit, although those employees had voted in the election. **

In August, 1979, the UFW filed a Unit Clarification Petition with the Board. The union asked the Board to determine whether or not the above properties were within the certified unit.

James Valdagna is an owner of Prunetree, and is not a principal at Mayfair's other holdings. The UFW asserts that, at the time of the original election in 1978, Mayfair had a management agreement with Prunetree. Mayfair employees and Mayfair equipment were freely interchanged between Prunetree and Mayfair at that time. Lamar Hart, who was the General Manager for Mayfair, was also the manager for Prunetree, according to the union. Furthermore, Mayfair foremen worked at and supervised the work done at the Prunetree property. Mayfair mechanics, it is told, also worked at the Prunetree properties.

As the negotiations started, the union was informed by the employer of an alleged Mayfair/Prunetree "split". According to the UFW, it was told by company representatives that the management agreement noted above no longer existed. After the split, Prunetree retained enough Mayfair employees, foreman, and Mayfair equipment to continue running its operation. Dennis Pappani was hired as the Ranch Manager of Prunetree.

The UFW treats this "split" as the initial step whereby Prunetree became a "successor" to Mayfair, and thus sharing the bargaining responsibility. After the union filed the unit clarification petition, Mayfair and Prunetree entered into a

** See 8 Cal. Admin. Code §§20355(a)(2) and 20355(b). The Employer did

settlement agreement with the UFW and recognized it as the collective bargaining representative.

In negotiations for a contract, Kenwood Youmans, an attorney, was the head negotiator for both Mayfair and Prunetree. However, the union asserts, because Prunetree was reorganized as a separate unit from Mayfair, Joe Walters represented Mayfair at negotiations, and Dennis Pappani represented Prunetree. Thus, although the negotiations were conducted together, they were considered separate negotiations.

The UFW, Mayfair and Prunetree reached an agreement on the unit. They agreed to exclude from the unit the walnut bleacher in Farmersville, the dehydrator for nuts in Cotton Center, and the dehydrator for nuts and prunes in Farmersville. Additionally, the union asserts that they also agreed to treat Prunetree as a separate unit, but to negotiate over those workers' terms and conditions, and to cover both, through separate units, under the same collective bargaining contract. After this settlement agreement was reached, the UFW withdrew its petition for unit clarification.

The employer's version differs from the above account. It claims that the Board never decided the merits of the UFW's unit clarification petition because Mayfair agreed to drop its contention that Prunetree was not in the unit as part of the settlement agreement executed on January 16, 1980. Since that date, the employer claims, Prunetree has been treated as part of the bargaining unit by the UFW and Mayfair. It cites that all of the collective bargaining agreements have included both divisions and the terms of those agreements have applied to both.

The UFW points out that, in the past two contracts that the union signed with Mayfair and Prunetree, that they were executed separately by Mayfair representatives and Prunetree representatives, that each company files its own separate reports with the UFW's benefit plans, each sends their dues separately, and, when requesting bargaining, separate letters are sent to Mayfair and Pruntree. As noted earlier, two separate seniority lists are kept for employees of each division, and there is no more interchange of employees as there had been before the election.

Each division has a separate manager - Lamar Hart for Mayfair and Dennis Pappani for Prunetree. There are separate headings for each, as well as signatures, on the two contracts signed by the union and Prunetree and Mayfair.

However, the managers of Prunetree and Mayfair both report to James S. Melehan in Mayfair's San Jose office. James S. Melehan is presently a principal in both Mayfair and Prunetree. Labor relations for Prunetree and other Mayfair ranches in the unit have thus been handled jointly. All of the land parcels of the two entities are located within a ten mile radius. Payroll records for both divisions are processed through the San Jose office. Timecards for Prunetree employees are processed through Mayfair's office in Cotton Center. All accounts payable and accounts receivable for Prunetree are handled through Mayfair's Cotton Center and San Jose offices.

There is still interchange of farming equipment between the two divisions. All equipment repairs for Prunetree are done at the Mayfair mechanic's shop. The crops at both divisions are basically the same. The wages and working conditions are the same for both. Labor relations policies emanate from the San

Jose headquarters for both Prunetree and Mayfair. The same law firm represents both on labor relations matters. James Melehan is actively involved in the daily affairs and the operations at both divisions, a fact that is known to employees of Prunetree and Mayfair.

1. Analysis.

Although the UFW analyzes the questions raised regarding the unit under "successorship" principles, this is clearly not the run-of-the mill successorship case, if it is one at all. Successorship cases under the NLRB almost invariably involve a change in an employment relationship stemming from a change of ownership in the employing agency. NLRB v. Colten, 105 F. 2d 179 4 LRRM 638 (1939); Tom-A-Hawk Transit, Inc. v. NLRB, 73 LRRM 2020 (1969); John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543 (1964); NLRB v. Zayre Corp., 74 LRRM 2084 (1970); Firchau Logging Company, Inc., 126 NLRB No. 149 (1960).

However, there is language in such cases that suggests that rearrangements of businesses, and other changes in the employment relationship, as well as changes in ownership, raise legal issues of successorship, since it is the employing industry encompassed by the enterprise, rather than the employer/owner that is the focus in representation questions. This makes sense in the agricultural context due to the existence of various forms of ownership as opposed to farm management, such as land management companies that operate farms for several absentee owners, packing houses that may or may not be owned by the farmers who send produce through the packing house, custom harvesters, and many combinations of ownership and/or control. See NLRB v. Colten, Supra.

Even viewing this issue as one of successorship - dating from the "split" in management - a strict reading of legal precedent favors a finding that Mayfair and Prunetree are a single unit. The factors in favor of such a conclusion are numerous and weighty, especially those connected with a centralization of labor relations in one unit, and an identity of work, wages, and working conditions. Thus, although there may have been a management "split", the employees were minimally affected by such split, with the exceptions that there was no longer an interchange of employees and that separate seniority lists are kept at each division. The "industry" has basically remained the same, however. Therefore, viewed from a strict successorship analysis, and viewed from the requirement under Labor Code section 1156.2, it would be recommended that the Board find that Prunetree and Mayfair are part of one single unit.

The analysis does not stop here, however. If the Board finds that these are part of the same unit, then what about the employees of the walnut bleacher in Farmersville, and the dehydrator plants in Cotton Center and Farmersville? None of those employees voted in the decertification election nor did any party seek to have them vote, nor were any employee lists submitted for any of those three. It can be argued that these employees were disenfranchised. If the Board finds that Prunetree and Mayfair are a single unit, does it also have to find that the remainder of the employees who voted in the election leading to the certification are also in the same unit?

The union offers a type of estoppel argument, in addition to its successorship position. It argues that the company, after certification tried to force it to carve out separate units for Mayfair, Prunetree, the dehydrators, and the bleacher. When the

union resisted and filed a unit clarification petition, an agreement was entered into, perhaps, as the union asserts, the agreement was legally permissible and perhaps it was not. In any event, the agreement modified the initial certification by excluding the bleacher and dehydrators employees, execluded Prunetree on the one hand, but later included it as a successor. The Board was not a party to this agreement. Therefore, the parties carved out their own units and relied on their agreement in executing two prior contracts. Now, the union asserts, the employer is seeking to benefit by its own wrong in insisting that the two units be separate in 1979, and taking the opposite position with regard to the present decertification election. In short, it is suggested that the company has come to the Board with unclean hands and requests that the ALRB not enforce an agreement that the employer claims was not legally appropriate in the first place.

The employer, on the other hand, disclaims any agreement that the Prunetree and Mayfair divisions were deemed separate units for the purposes of bargaining. Instead, it claims that the two units have been treated as a single unit, with some structural separation. It argues the illegality of recognizing more than one unit, citing Labor Code section 1156.2 and John Elmore Farms, 3 ALRB No. 16, p. 3.

The facts adduced by this investigation suggest that Prunetree and Mayfair were indeed treated as separate units for bargaining purposes, despite the employer's protestations to the contrary. However, the terms and conditions of employment for both groups of employees, the nature of the work, and the labor relations policy are so connected that there is no question that a single unit is appropriate. There remains the possibility that more than one

unit is appropriate in this case.

There is perhaps a public interest in ensuring that parties subject to the jurisdiction of the Act are discouraged from entering into voluntary agreements not approved by the Board, and which are arguably in conflict with the Act. In situations like the present, therefore, the Board should first determine whether at least a colorable claim of successorship (here, whether there are separate units) has been made, and only if it has should it (Board) give force and effect to a voluntary agreement altering the certification.

In assessing the factors present to determine whether the union has made at least a colorable claim to warrant treating Mayfair and Prunetree as separate units, the weight of the evidence is clearly in favor of finding them to be a single unit. Had it been otherwise, the Board would be in a better position to give effect to the voluntary agreement that was entered into, and thus treat them separately. Therefore, viewed from a strict statutory analysis and from the equitable estoppel analysis immediately above, it is my conclusion that Mayfair and Prunetree are a single unit. It is for the Board and the parties to argue the appropriateness and the impact that such a finding has on the related issue of whether the bleacher and dehydrator employees should have also been included in the unit and voted. In conclusion, it is recommended that the challenges to the ballots of the Prunetree employees be overruled and their votes be counted.

Dated: September 7, 1983

Respectfully submitted,

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Delano Regional Director