

Valley Harvest Distributing, Inc. Employer-Petitioner and Fresh Fruit and Vegetable Workers Local 78-A, United Food and Commercial Workers International Union, AFL-CIO and CLC and United Farm Workers of America, AFL-CIO. Case 32-RM-477

June 15, 1989

DECISION ON REVIEW AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
JOHANSEN AND CRACRAFT

On June 4, 1987, the Regional Director for Region 32 issued a Decision and Order in this proceeding in which he dismissed the petition seeking a unit of all the Employer's cauliflower field workers after finding that: (1) within the meaning of Section 2(3) of the Act, the cutter-trimmers are agricultural laborers, and the employees who wrap, pack, and stack the harvested cauliflower, make boxes, and pull the trailers on which these operations are performed are statutory employees, and (2) no question concerning representation has been raised by Fresh Fruit and Vegetable Workers Local 78-A's claim to represent those employees in the Employer's field operations whose functions were previously performed in the Employer's off-field packing shed.¹

On March 21, 1988, the Board granted the Employer-Petitioner's and the United Farm Workers' requests for review of that decision. No briefs were filed on review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon review and consideration of the entire record, the Board has decided to affirm the Regional Director's dismissal of the petition, but only for the following reasons.

We agree with the Regional Director that none of the workers employed in the classifications at issue here are agricultural laborers under the secondary definition of agriculture. The Regional Director found that a "regular and substantial" amount of the Employer's business is performed for outside growers, and asserted jurisdiction relying

¹ Until February 1986, Local 78-A had been recognized by the Employer as the bargaining representative of all packingshed employees engaged in the packing and handling of cauliflower. When the bulk of the packing operations was moved to the fields, the Employer obtained all its workers through the United Farm Workers' hiring hall. Subsequently, the Employer recognized the Farm Workers as the bargaining representative of its field packing workers, and these workers were added to the existing Farm Workers' unit of agricultural laborers. The Farm Workers have disclaimed any interest in representing individuals found to be statutory employees. Thus, as found by the Regional Director, there are no competing claims for recognition of the field packing employees

on *Grower-Shipper Vegetable Assn.*, 230 NLRB 1011 (1977).²

We also agree, for the reasons set forth by the Regional Director, with his further findings concerning the Section 2(3) status of the Employer's field workers.³

However, we disagree with the Regional Director's rationale for dismissing the petition. He found that the packinghouse, with the exception of the truck loading work that continues to be performed by the forklift drivers at the shed, "has essentially been transferred to the field" and that, because the employees who work on, and pull, the field trailers are "part of the unit represented historically" by Local 78-A, its claim to represent them does not raise a question concerning representation.

The collective-bargaining agreement between the Employer and Local 78-A, effective from March 16, 1983, to March 17, 1987, defined the recognized unit as including "all [the Employer's] packinghouse employees engaged in packing and handling [cauliflower]." Prior to the February 1986 partial closing of its shed operations, the Employer employed unit employees in eight classifications, including those of wrappers, packers, stackers, box makers, and dock workers (forklift drivers). Following the shift of the packing operations to the fields, the Employer operated with 2 crews of 22 workers each. Approximately half of each crew was composed of agriculturally exempt cutter-trimmers. All the other field workers are employees engaged in wrapping, packing, stacking, box assembling, and driving tractors to pull the field trailers. All field employees, as noted, were obtained through the Farm Workers' hiring hall, and no preference was given to former shed employees. Ultimately, only four former shed employees were employed in the field packing operations.

² We note that, a fortiori, the Employer's field workers would not be exempt under the stricter standard for secondary agriculture established in *DeCoster Egg Farms*, 223 NLRB 884 (1976). That case held that the handling of any farm products not grown by the employer or on the employer's farm results in the loss of exempt status.

³ The activities of the field workers engaged in wrapping, packing, box making, stacking, and tractor pulling are distinct from the harvesting of the crop by the cutter-trimmers and take place subsequent to when the cauliflower is "reduced to possession." They are thus statutory employees. *Mario Saikhon, Inc.*, 278 NLRB 1289, 1291 (1986). As to the cutter-trimmers, there is no dispute that the cutting function itself comes within the harvesting aspect of primary agriculture. The Regional Director found that the Employer has now completely merged into that job classification the trimming function previously performed by employees in the shed unit. We agree with the Regional Director that, as it is performed as a single continuous process, the cutting and trimming is agricultural activity within the definition of harvesting. *Olaa Sugar*, 118 NLRB 1442 (1957). We further agree with the Regional Director that the cutter-trimmers spend the vast majority of their time in primary agriculture and any nonexempt work performed by them on the field trailers is not frequent or substantial enough to cause them to lose the exemption.

On April 29, 1986, Local 78-A, in a letter to the Employer, demanded recognition of all employees employed on the field trailers and requested that the former shed employees in all classifications now part of the field operations, including at a minimum the wrappers, packers, and stackers, be recalled under the seniority terms of the packing-house collective-bargaining agreement. Local 78-A's demand, then, was based on its claim that the Employer had essentially relocated most of the unit and that the collective-bargaining agreement covered both the remaining dock workers and the field employees performing packing and handling functions previously done in the shed.

On May 16, 1986, the Employer filed its petition seeking an election in a unit of certain classifications from the shed unit, specifically not including the dock workers, plus the trailer pullers and those workers found herein to be exempt agricultural laborers.

Local 78-A, in requesting recognition as bargaining representative of the field employees, did so in furtherance of its claim that these employees continued to be part of the still existing shed unit. We find, however, that Local 78-A's previous recognition as bargaining representative for the employees who once performed the various packing functions in the shed does not carry over because the unit of employees did not transfer to the field. Under *Harte & Co.*, 278 NLRB 947, 948 (1986), a bargaining relationship remains in effect when an employer moves an operation to a new location if operations remain substantially the same and the number of transferred employees constitute a substantial percentage—in that case approximately 40 percent or more—of the new employee complement. Since only 4 former shed employees ultimately came to work in the Employer's field pack-

ing operation out of approximately 22 statutory employees, all of whom were hired through the Farm Workers' hiring hall, no transfer or continuation of the unit took place.⁴ In these circumstances, because Local 78-A does not now represent any of the petitioned-for employees, and is not seeking to represent those employees as a separate unit from the existing packingshed unit,⁵ and because the Farm Workers have disclaimed any interest in representing statutory employees, we find that no question concerning representation has been raised within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.⁶

Nor do we deem it appropriate that the requested field employees be accreted to the shed unit. Thus, after the partial closure of the shed, only 2 dock workers remained in the unit of shed employees, but both field crews currently number approximately 22 statutory employees working on the field trailers. It is inappropriate to accrete a large group of employees into a unit of two. *Renaissance Center Partnership*, 239 NLRB 1247 (1979). Accordingly, and as we have determined that no question concerning representation exists, we shall dismiss the petition.

ORDER

The petition is dismissed.

⁴ We note that the hiring of the field operation employees through the Farm Workers' hiring hall was not alleged to constitute an unfair labor practice.

⁵ The instant petition filed by the Employer seeks an election in a unit of all field employees separate from the existing shed unit, whereas Local 78-A requested recognition as the bargaining representative for the statutory field employees as part of the shed unit.

⁶ See, e.g., *Woolwich, Inc.*, 185 NLRB 783 (1970); *Bowman Building Products*, 170 NLRB 312 (1968).