

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 26**

**EQUITY GROUP – KENTUCKY DIVISION LLC**

**Employer**

**and**

**Case 26-RC-072802**

**TEAMSTERS LOCAL UNION 89**

**Petitioner**

**REGIONAL DIRECTOR'S DECISION AND ORDER**

The Employer, Equity Group – Kentucky Division LLC<sup>1</sup>, is an integrated poultry company located in Albany, Kentucky and Franklin, Kentucky. The Petitioner, Teamsters Local Union 89, filed a petition with the National Labor Relations Board (the Board) under Section 9(c) of the National Labor Relations Act (the Act) seeking to represent a unit of five hatchery drivers employed at the Employer's facility in Franklin, Kentucky. A hearing was conducted before a hearing officer of the Board and both parties filed post-hearing briefs.

The Employer contends that the petition should be dismissed because the hatchery drivers are "agricultural laborers" exempt from the Act's coverage by virtue of the definition of "employee" in Section 2(3) of the Act. The Petitioner asserts that the hatchery drivers are employees as defined in Section 2(3) of the Act and, therefore, dismissal of the petition is inappropriate.

I have considered the evidence presented at the hearing, the arguments advanced by the parties, the relevant case law and the parties' briefs. As

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<sup>1</sup> The Employer's name appears as amended at the hearing.

discussed below, I have concluded that the hatchery drivers are “agricultural laborers” who are exempt from the Act’s coverage. Accordingly, I am dismissing the petition.

To provide a context for my decision, I will first present an overview of the Employer’s operations, followed by a discussion of the facts and my analysis of those facts as it pertains to the petitioned-for employees.

#### **I. OVERVIEW OF EMPLOYER’S OPERATIONS**

The Employer is an integrated poultry operation located in Albany and Franklin, Kentucky. The operations in Albany consist of a slaughtering and processing facility where broiler chickens are prepared for market for various customers, a feed distribution facility, and several breeder and broiler farms. These farms are owned by independent farmers who are under contract with the Employer to either raise chicks, raise hens or care for eggs in accordance with policies and procedures that are established by the Employer. The Employer supplies the farms with feed and provides veterinary services for the birds. The eggs and birds at these farms are the sole property of the Employer.

The live production part of the Employer’s operation occurs at the facility in Franklin, Kentucky, which is located about 105 miles from the Albany facility. To conduct its operations there, the Employer maintains a feed mill, a truck stop, an office where clerical employees and managers work, and a hatchery located in a separate building where eggs are incubated and hatched.

At the hatchery, the Employer employs about 24 employees, including a hatchery manager, a hatchery supervisor, a clerk, 16 hatchery employees and

the 5 petitioned-for hatchery drivers. The hatchery manager reports to a general manager who is responsible for the overall supervision of both the Franklin and Albany facilities. The hatchery manager and hatchery supervisor are only responsible for supervising employees at the hatchery. All employees at the hatchery, including the petitioned-for drivers, clock in and out at a time clock and take their breaks there.

As will be explained in greater detail below, two of the Employer's hatchery drivers travel from the hatchery to independently owned breeder farms where hens are housed to produce eggs. The eggs are then loaded and transported to the hatchery. The drivers performing these duties are called "egg drivers." Once the eggs hatch, the remaining three drivers deliver the chicks to independently owned broiler farms where they are raised until they reach broiler size. The three drivers who perform this task are referred to as "chick drivers."

## **II. FACTS REGARDING EGG DRIVERS AND CHICK DRIVERS**

### **A. Egg Drivers**

The primary role of the Employer's two egg drivers is to supply the hatchery with eggs that are produced and obtained from independently owned breeder farms. Egg drivers start their work day at the hatchery by clocking in. After clocking in, the egg drivers will use a hydraulic lift to load their truck with empty egg buggies that are located in the egg holding room in the back of the hatchery. Before leaving the facility, egg drivers will also perform a pre-trip inspection of their truck to insure its safety.

Upon arriving at the breeder farm, the egg driver will back the truck up to the breeder farm's temperature controlled egg holding room, use the truck's hydraulic lift to offload the empty egg buggies and roll the buggies into the egg holding room. The egg driver will then load the full egg buggies containing eggs laid by the hens onto the truck using the hydraulic lift. Once the full egg buggies are rolled onto the truck, the egg driver adjusts the buggies and secures them to the truck to insure that the eggs are properly protected. Since chick embryos inside the eggs are in suspended animation until they are put into incubators at the Employer's hatchery, the failure of egg drivers to properly place and secure the eggs could either cause the eggs to break or jeopardize the incubation of the eggs.

After the eggs are loaded and secured, the egg driver will either return to the hatchery to deliver the eggs to the holding room where they will eventually be hatched or drive to another breeder farm to load additional eggs. During the course of a work day, the egg driver makes about one to three trips to various breeder farms to collect eggs.

When the egg driver returns to the hatchery with eggs, he unloads the egg buggies using the hydraulic lift, rolls them into the temperature controlled egg holding room making necessary adjustments to insure the safety of the eggs and leaves them in a pre-designated area for fresh eggs. The unloading and placement of eggs in the holding room are tasks that are part of the egg hatching process.

The eggs that egg drivers place in the holding room are kept there for about one to five days. Hatchery employees then move the eggs in the rolling buggies to the setter machine where the eggs are incubated for about 19 days. After the 19-day incubation period, the eggs are injected with various types of vaccines, transferred to chick trays and then placed into a hatcher machine for the final two days of the hatch process.

The hatched chicks are then pulled out of the hatcher and the egg shells and unhatched eggs are removed. The baby chicks are then placed on a conveyer belt that transports them through a respiratory vaccination cabinet. The chicks are then counted and placed in chick boxes, about 100 chicks to a box. The chick boxes are then stacked ten boxes high on a dolly by hatchery employees and rolled into a holding area in the chick room for handling by the Employer's three chick drivers.

#### **B. Chick Drivers**

The role of the three chick drivers is to transport the boxed chicks from the hatchery to independently owned broiler farms. Chick drivers begin their work day by clocking in and performing a pre-trip inspection of the "Smithway" or the truck used to transport chicks. The chick driver will then back the truck into a bay at the hatchery, roll the stacked chick boxes into the truck with the assistance of other hatchery workers, secure the load and drive the load to the assigned broiler farms.

Upon arriving at the broiler farm, the chick driver positions the truck in a safe place to unload and opens the back of the truck. Using a forklift that is on

the truck, the chick driver offloads the stacked chick boxes from the truck and places them in chicken houses so they can be dumped. The chicks are dumped or removed from the boxes by broiler farm employees with the occasional assistance of chick drivers. While the chicks are being dumped, chick drivers will take the empty boxes to the truck and return with more full boxes. After the chicks are dumped from the boxes, the chick driver loads the forklift and empty boxes in the truck and returns to the hatchery.

Upon returning to the hatchery, the chick driver offloads the empty chick boxes into a room where they are sprayed clean and disinfected by other hatchery employees. During this process, the chick driver will proceed to the chick room to load the truck for another trip to a broiler farm or, if his work day is over, he will sweep and clean the truck.

### **III. LEGAL ANALYSIS**

#### **A. The Applicable Law**

The protections of the Act extend only to “employees.” *Holly Farms Corp. v. NLRB*, 517 U.S. 392, 397 (1996). Section 2(3) of the Act excludes “any individual employed as an agricultural laborer” from the definition of “employee.” Since 1946, Congress has added an annual rider to the Board’s appropriation directing the Board to apply the definition of “agriculture” found in Section 3(f) of the Fair Labor Standards Act (FLSA), 29 U.S.C. Section 203(f), in construing the term “agricultural laborer.” Section 3(f) of the FLSA provides:

“Agriculture” includes farming in all its branches . . . and any practices . . . performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including

preparation for market, delivery to storage or to market or to carriers for transportation to market.

Under this definition, “agriculture” has both a primary and a secondary meaning. *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755, 762-763 (1949). The primary meaning refers to actual farming operations, this is, those functions normally associated with farming such as cultivation, tilling, growing, and harvesting of agricultural commodities. The secondary meaning includes any practices that are performed by a farmer or on a farm as an incident to or in conjunction with such farming operations. *Department of Labor Regulations Sec. 780.105, 29 CFR Sec. 780.105* (2002). The party asserting that employees are exempt as agricultural laborers has the burden of proving the applicability of the exemption. *AgriGeneral L.P.*, 325 NLRB 972 (1998).

As will be explained below, the facts of this case show that the petitioned-for drivers are “agricultural laborers” and are not “employees” within the meaning of Section 2(3) of the Act.

#### **B. Application of Law to Egg and Chick Drivers**

The Board in *Arkansas Valley Industries, Inc.*, 167 NLRB 391 (1967) was presented with facts similar to the instant case and reached a conclusion that drivers were exempt agricultural laborers. In *Arkansas Valley*, the union sought to represent a unit of hatchery employees, including five employees who drove hatchery pickup and delivery trucks. The employer’s hatchery operations involved picking up eggs at independently owned breeder farms; delivering the eggs to the hatcheries; unloading the eggs and placing them in incubators; transferring the eggs to hatching machines; inoculating the chicks; transporting

the chicks to independently owned broiler farms; raising the chicks to broiler size; and taking the broiler size chickens to the employer's processing plant to be prepared for market. Similar to the petitioned-for egg and chick drivers in the case before me, five of the employees in *Arkansas Valley* operated trucks that were used to transport eggs from the breeder farms to the hatcheries and chicks from the hatcheries to the broiler farms.

The Board dismissed the petition in *Arkansas Valley* finding that the hatchery employees and drivers were agricultural laborers exempt from the Act's coverage:

“As to the five employees who, in addition to performing work at the hatcheries, engage in pickup and delivery operations, it is clear that their work in the hatchery is agricultural in nature. Moreover, although hauling itself is a nonfarming activity, it is also clear that the Employer, in operating the chicken hatcheries, is engaged in the exempt activities of raising poultry, and that the employees in making pickups and deliveries, in the circumstances presented here, are engaged in exempt activities. We therefore find that these five employees are also agricultural laborers.” *Id.*

The Board's ruling in *Arkansas Valley*, with facts analogous to the instant matter, supports a finding that the Employer's egg drivers and chick drivers are agricultural laborers. The work performed in the Employer's hatchery is clearly agricultural in nature and forms a critical part of its integrated poultry operations. *Bayside Enterprises, Inc. v. NLRB*, 429 U.S. 298 (1977) (activities of poultry company in breeding and catching chicks are clearly agricultural in character). At the hatchery, the process of incubating and hatching eggs starts with the work of the Employer's egg drivers, who handle, load, secure and deliver eggs to the hatchery where they are unloaded (by egg drivers), vaccinated, incubated and

hatched. The hatched chicks are then boxed by hatchery employees. The chick drivers have “hands on” involvement in the process immediately after the chicks are boxed. These drivers load the boxed chicks onto delivery trucks with the help of hatchery employees and deliver the chicks to farms where they are raised and eventually transported to the Employer’s processing facility. Without the egg drivers transporting the eggs from the breeder farms, there would be no eggs to hatch. Without the chick drivers hauling the chicks to the broiler farms, there would be no chickens to process. Thus, the Employer’s hatchery operations rely heavily upon the services performed by the egg and chick drivers.

The Supreme Court case of *Holly Farms Corp. v. NLRB*, 517 U.S. 392, 116 S. Ct. 1396 (1996) lends further support to my conclusion that the Employer’s egg and chick drivers are agricultural laborers. In *Holly Farms*, the Court determined that live-haul drivers, who transported fully grown chickens from independent grower farms to the employer’s processing plant for slaughtering, were not agricultural laborers but employees as defined in Section 2(3) of the Act because their work of collecting chickens for slaughtering was an activity servicing the employer’s processing operations.

While the instant case does not involve live-haul drivers, the Court in *Holly Farms* noted the distinction between the employer’s hatchery operations and its live-haul operations:

“When an integrated poultry producer ‘contracts with independent growers for the care and feeding of [its] chicks, [its] status as a farmer engaged in raising poultry ends with respect to those chicks.’ *Id.* at 302, n. 9, 97 S.Ct., at 580, n. 9 (citing *Imco Poultry*, 202 N.L.R.B., at 260). Accordingly, when the live-haul employees arrive on the independent farms to collect broilers for carriage to

slaughter and processing, Holly Farms does not resume its status as 'farmer' with respect to those birds, the status Holly Farms had weeks before, when the birds were hatched in its hatcheries. *Id.* at 400-401.

The Court also accepted the Board's determination that employees involved in the employer's hatchery operations and hauling performed in conjunction with those operations are exempt from the Board's jurisdiction as agricultural laborers:

"The employer's status respecting the particular activity at issue accounts for the Board's determination that Holly Farms' 'egg haulers' (who transport eggs from the laying houses to the hatcheries), and 'pullet catchers' (who collect the breeding-destined birds on the farms of independent growers) rank as 'agricultural laborer[s].' As the record shows, the pullet catchers and egg haulers work in Holly Farms' hatchery operations, while the live-haul employees-who deal only with broilers-work out of the processing plant. 'There is no interchange between these classifications. Broiler haulers do not haul pullets and pullet haulers do not haul broilers.' App. 20a-21a. Accordingly, the Board reasonably aligned the pullet catchers and egg haulers with Holly Farms' poultry-raising operation, and the live-haul employees with the corporation's slaughtering and processing activities." *Id.* at 404.

Here, the Employer's egg and chick drivers are intimately involved in the Employer's hatchery (or poultry raising) operations. They report to work at the hatchery, are supervised by hatchery supervisors, perform work at the hatchery, and transport eggs to the hatchery and chicks to the farms. Unlike the live-haul drivers in *Holly Farms*, the egg and chick drivers perform no work in connection with the Employer's slaughtering and processing activities. Their work is strictly confined to the hatchery operations. Therefore, aligning the egg and chick drivers to the Employer's poultry-raising operations results in their being exempt from the Act.

In its post-hearing brief, the Petitioner relies on a single case - *Jack Frost, Inc.*, 201 NLRB 659 (1973) – to support its claim that the egg and chick drivers are “employees” within the meaning of Section 2(3) of the Act, not “agricultural laborers.” However, the *Jack Frost* decision is distinguishable and fails to compel a finding that the egg and chick drivers are not “agricultural laborers.”

In *Jack Frost*, the employer operated an egg processing plant and employed truck drivers in the plant to pick up eggs at contract farmers’ farms and transport them to the plant and egg processing employees to grade, inspect and pack the delivered eggs for shipment. After the eggs were packed, the truck drivers transported them to various points for marketing and further processing. The sole issue before the Board was whether truck drivers and processing employees at the plant were “employees” under the Act or exempt “agricultural laborers.” It is important to note that although the employer operated a hatchery, the status of the employees who performed work in connection with the hatchery operations was never examined or decided by the Board in this case.

Based on the above-described facts, the Board in *Jack Frost* found that the employees at the egg processing plant were not engaged in any agricultural function and that the contractual relationship with the contract farmers did not transform the drivers and processing employees into agricultural laborers. As a result, the Board directed an election in a unit of these employees. Clearly, the facts in the instant case are significantly different from those in *Jack Frost* since the Employer’s drivers transport eggs and chicks, not for processing and

marketing purposes, but to support the Employer's hatchery or poultry raising operations.

#### **IV. CONCLUSION**

Based on the foregoing, and the record as a whole, I find that the drivers at issue in the instant position are agricultural laborers within the meaning of Section 2(3) of the Act, and therefore fall outside the jurisdiction of the Act. Accordingly, I find that the instant petition is improper and must be dismissed.

#### **V. ORDER**

IT IS HEREBY ORDERED that the petition filed herein be, and thereby is, dismissed.

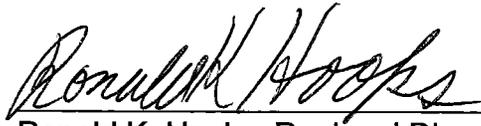
#### **VI. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington, DC by 5 p.m. EDT on **March 1, 2012**. The request may be filed electronically through the Agency's web site, [www.nlr.gov](http://www.nlr.gov),<sup>2</sup> but may not be filed by facsimile.

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<sup>2</sup> To file the request for review electronically, go to the Board's website at [www.nlr.gov](http://www.nlr.gov), select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

**DATED:** February 16, 2012.

A handwritten signature in cursive script that reads "Ronald K. Hooks". The signature is written in black ink and is positioned above a horizontal line.

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Ronald K. Hooks, Regional Director  
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