

Draper Valley Farms, Inc. and United Food and Commercial Workers Union, Local 44, chartered by United Food and Commercial Workers International Union, AFL-CIO, CLC, Petitioner. Case 19-RC-12562

July 21, 1992

ORDER DENYING REVIEW

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

The Board has delegated its authority in this proceeding to a three-member panel, which has considered the Employer's request for review of the Regional Director's Decision and Direction of Election. The request for review is denied as it raises no substantial issues warranting review. The Employer's request for a stay of the election also is denied.

In denying review, we reject the Employer's contention that its chicken catchers are engaged in primary agricultural activity, namely "harvesting," as defined in Section 3(f) of the Fair Labor Standards Act, 29 U.S.C. § 203(f). Although the harvesting of crops is included in the primary definition of agriculture under Section 3(f),¹ only the "raising" of poultry is covered, not its so-called harvesting, even assuming, *arguendo*, that term is appropriate in any context when applied to poultry.

Nor do we find that the Employer's chicken catchers are exempt under the secondary definition of agriculture. Instead, we find that the Employer's chicken catchers are engaged in activity incidental to a separate and nonfarming business activity of the Employer, and thus do not fall within the agricultural labor exemption contained in Section 2(3) of the National Labor Relations Act, 29 U.S.C. § 152(3).²

When employers have claimed that employees are agricultural laborers because they are engaged in activity incidental to or in connection with farming operations (the secondary definition of agriculture), the courts have generally rejected the claimed agricultural status when the employees in question were handling or working on agricultural products raised on farms

¹ Under this definition, "agriculture" has both a primary and a secondary meaning. See *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755, 762-763 (1949).

² Accordingly, we find it unnecessary to reach the Regional Director's assertion that the Board's holding in *Camsco Produce Co.*, 297 NLRB 905 (1990), applies to employees found to be engaged in primary agricultural activity.

other than their own employer's. *Victor Ryckebosch, Inc.*, 189 NLRB 40, 45 (1971). For example, in *NLRB v. O'Leary Sugar Co.*, 242 F.2d 714 (9th Cir. 1957), enfg. 118 NLRB 1442 (1957), the court found that hauling agricultural products from fields of independent growers should be treated differently from hauling agricultural products from O'Leary's own fields because hauling cane from the independent growers' fields could not be said to "be an incident . . . to O'Leary's farming operations."

It is against this background that the Board's decision in *Imco Poultry*, 202 NLRB 259, 260-261 (1973), on which the Regional Director relied, evolved. We find that holding, cited by the Supreme Court in *Bayside Enterprises v. NLRB*, 429 U.S. 298, 302 (1977), clearly on point. In relevant part, the Board stated:

The Board has consistently held that when an employer contracts with independent growers for the care and feeding of the employer's chicks, the employer's status as a farmer engaged in raising poultry ends with respect to those chicks. As the service crew employees involved herein are engaged in handling and transporting chicks on the farms of independent growers only after [the employer's] farming operations have ended, these employees cannot be performing practices incidental to, or in conjunction with, [the employer's] farming operations. More accurately, they are engaged in nonfarming operations which are incidental to, or in conjunction with, a separate and distinct business activity of the [employer], i.e., shipping and marketing.

We think it follows plainly from *Imco* that the Employer's chicken catchers are not, when working on the farms of independent growers who have concluded their "raising" activities, exempt as agricultural laborers. Thus, as it is undisputed that 60 percent of the chickens caught by the disputed employees are raised by independent growers and caught on their farms, it is inescapable that the Employer's chicken catchers "regularly" handle (and not "harvest") farm commodities other than those of the Employer, and thus are not exempt agricultural workers as defined in Section 2(3) of our Act. *Camsco Produce Co.*, *supra*.³

³ Member Oviatt adheres to his separate position in *Camsco Produce Co.*, but finds that it is satisfied in this case.