Bayside Enterprises, Inc. v. N.L.R.B., 429 U.S. 298 (1977)

97 S.Ct. 576, 94 L.R.R.M. (BNA) 2199, 50 L.Ed.2d 494, 79 Lab.Cas. P 11,799

KeyCite Yellow Flag - Negative Treatment

Distinguished by Coleman v. Sanderson Farms, Inc., 5th Cir.(Miss.),

November 5, 1980

97 S.Ct. 576 Supreme Court of the United States

 ${\tt BAYSIDE\ ENTERPRISES, INC., et\ al.,\ Petitioners,}$

NATIONAL LABOR RELATIONS BOARD.

No. 75-1267. | Argued Nov. 10, 1976. | Decided Jan. 11, 1977.

Synopsis

Order of National Labor Relations Board directing owners of poultry business to negotiate with certain truck drivers employed by them was enforced by the Court of Appeals, 527 F.2d 436, and the United States Supreme Court granted certiorari. The United States Supreme Court, Mr. Justice Stevens, held that evidence sustained determination that truck drivers who were employed to deliver feed from the employer's feed mill operation to contract farmers who were raising the chicks until they were returned to the employer for slaughtering and processing were not agricultural employees within meaning of exclusion for agricultural employees contained in the National Labor Relations Act.

Affirmed.

West Headnotes (8)

[1] Labor and Employment Agricultural Employees

Statutory definition of agriculture contained in the Fair Labor Standards Act includes farming in both a primary and secondary sense. Fair Labor Standards Act of 1938. § 3(f). 29 U.S.C.A. §

Standards Act of 1938, § 3(f), 29 U.S.C.A. § 203(f).

14 Cases that cite this headnote

[2] Labor and Employment - Judicial Review or Intervention

The raising of poultry is primary farming, but hauling products to or from a farm is not primary farming but may be secondary farming if it is performed by a farmer or on a farm as an incident to the farming operation. Fair Labor Standards

Act of 1938, § 3(f), 29 U.S.C.A. § 203(f).

19 Cases that cite this headnote

[3] Labor and Employment - Agricultural Laborers

Employer's business may include both agricultural and nonagricultural activities for purposes of National Labor Relations Act. National Labor Relations Act, § 2(3) as amended 29 U.S.C.A. § 152(3).

1 Cases that cite this headnote

[4] Labor and Employment & Agricultural Laborers

Mill in which poultry operation produced poultry feed and the processing plant in which it slaughtered and dressed poultry were not "agricultural operations" for purposes of the National Labor Relations Act. National Labor Relations Act, § 2(3) as amended 29 U.S.C.A. § 152(3).

3 Cases that cite this headnote

[5] Labor and Employment - Agricultural Laborers

Farms on which poultry operation produced hatching eggs and its activities in breeding and hatching chicks were "agricultural" in character for purposes of National Labor Relations Act.

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National Labor Relations Act, § 2(3) as amended

29 U.S.C.A. § 152(3).

2 Cases that cite this headnote

[6] Labor and Employment ← Questions of Law or Fact; Findings

Conclusion of the National Labor Relations Board that not all activity on a contract farm should be regarded as agricultural activity of an integrated farmer is one which the Supreme Court must respect even though the issue might, with nearly equal reason, be resolved one way rather than another. National Labor Relations

Act, § 2(3) as amended 29 U.S.C.A. § 152(3).

22 Cases that cite this headnote

[7] Labor and Employment Status of Employer in General

Evidence that truck drivers worked for a large, vertically integrated poultry business which hatched eggs, which then supplied the one day old chicks, along with feed, medicine, and supplies, to contract farmers, and which picked up the chicks about nine weeks later when ready for slaughtering and processing and that truck drivers in question were hired to deliver feed from the poultry operation's feed mill to the contract farmers sustained NLRB's determination that the truck drivers were not agricultural employees within meaning of exclusion from the National Labor Relations Act. National Labor Relations Act, § 2(3) as amended

29 U.S.C.A. § 152(3); Fair Labor Standards Act of 1938, § 3(f), 29 U.S.C.A. § 203(f).

18 Cases that cite this headnote

[8] Labor and Employment - Agricultural Laborers

NLRB's conclusion that certain truck drivers who worked for a vertically integrated poultry operation were not agricultural laborers was based on reasonable interpretation of the National Labor Relations Act and was consistent with the Board's prior holdings and the Secretary of Labor's construction of similar provisions of the Fair Labor Standards Act. National Labor Relations Act, § 2(3) as amended 29 U.S.C.A. § 152(3); Fair Labor Standards Act of 1938, §

19 Cases that cite this headnote

3(f), 29 U.S.C.A. § 203(f).

**577 Syllabus *

*298 Petitioners, operating a large, vertically integrated poultry business (including breeding farms, chicken hatcheries, a slaughtering and processing plant, and a mill for producing poultry feed), contract with 119 independently owned and operated farms for the raising of chickens which are hatched in petitioners' hatcheries. Petitioners supply the farms with one-day-old chicks, their feed, medicine and supplies, and fuel, and pick up the chicks about nine weeks later when ready for slaughtering and processing. Petitioners retain title to the chicks at all times and pay the farmers a guaranteed sum plus a bonus based on poultry weight in exchange for the farmers' services in caring for and housing the **578 chicks. The chicks are fed with feed from petitioners' feedmill delivered by truck drivers employed by petitioners specifically for this purpose. The petitioners refused to bargain collectively with a union representing these drivers, contending that the drivers were not employees as defined in s 2(3) of the National Labor Relations Act but were exempted from protections of the Act as agricultural laborers by the related definition in s 3(f) of the Fair Labor Standards Act. The union's resulting unfair labor practice charge was sustained by the National Labor Relations Board and the Court of Appeals on the ground that the truck drivers were not agricultural laborers because their duties were not incidental to petitioners' agricultural activities. Held: The drivers are "employees" within the coverage of the NLRA, not agricultural laborers, their status being determined by the character of the work that they perform for their employer, which work is not incidental to any of their employer's (petitioners') agricultural activities, the feed-mill operation

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being nonagricultural and the storage and use of feed on the independent farms being agricultural activity performed by the independent farmers not by petitioners. The NLRB's conclusion that the truck drivers are employees is based on a reasonable interpretation of the NLRA, comports with the NLRB's prior holdings, and is supported by the Secretary of Labor's construction of s 3(f). Pp. 578-581.

527 F.2d 436, affirmed.

Attorneys and Law Firms

*299 Alan J. Levenson, Portland, Maine, for petitioners.

Harriet S. Shapiro, Washington, D. C., for respondent.

Opinion

Mr. Justice STEVENS delivered the opinion of the Court.

The petitioners, collectively described as "Bayside," are three affiliated corporations operating a large, vertically integrated poultry business in Maine. ¹ The question they present is whether six of their employees, who truck poultry feed from their feedmill to 119 farms on which their chickens are being raised, are "agricultural laborers" and therefore not covered by the National Labor Relations Act.

After a few preliminary talks, Bayside refused to bargain with the union representing these drivers on the ground that they were not "employees" within the meaning of the Act. ² The union's resulting unfair labor practice charge was sustained by the National Labor Relations Board and the Court of Appeals for the First Circuit. ³ An apparent conflict with decisions of the Fifth and Ninth Circuits ⁴ led us to grant certiorari, 425 U.S. 970, 96 S.Ct. 2165, 48 L.Ed.2d 793. We now affirm.

The protections of the National Labor Relations Act ⁵ extendonly *300 to "employees." Section 2(3) of the Act,

29 U.S.C. s 152(3) provides that the "term 'employee'... shall not include any individual employed as an agricultural laborer..." Congress has further provided that the term "agricultural laborer" in the NLRA shall have the meaning specified in s 3(f) of the Fair Labor Standards Act. 6 It is therefore, **579 that section and the decisions construing it

which are relevant even though this proceeding arose under the NLRA.

[1] [2] Section 3(f) provides, in relevant part: "'Agriculture' includes farming in all its branches (including) the raising of . . . poultry, and any practices . . . performed by

a farmer or on a farm as an incident to or in conjunction with such farming operations " 52 Stat. 1060, 29 U.S.C. s 203(f).

This statutory definition includes farming in both a primary and a secondary sense. ⁷ The raising of poultry is primary *301 farming, but hauling products to or from a farm is not primary farming. Such hauling may, however, be secondary farming if it is work performed "by a farmer or on a farm as an incident to or in conjunction with such farming operations . . ." Since there is no claim that these drivers work "on a farm," the question is whether their activity should be regarded as work performed "by a farmer." The answer depends on the character of their employer's activities.

[3] An employer's business may include both agricultural and nonagricultural activities. Thus, even though most of the operations on a sugar plantation are agricultural, persons employed in the plantation's sugar-processing plant are not "agricultural employees." Maneja v. Waialua Agricultural Co., 349 U.S. 254, 264-270, 75 S.Ct. 719, 725-728, 99 L.Ed. 1040. In this case, both parties agree that some of Bayside's operations are agricultural and some are not.

[4] [5] The mill in which Bayside produces poultry feed and the processing plant in which it slaughters and dresses poultry are not agricultural operations. 8 On the other hand, the six farms on which it produces hatching eggs, and its activities in breeding and hatching chicks, are clearly agricultural in character. The parties are in dispute with respect to the character of Bayside's work related to the raising of the chickens.

The chickens are raised on 119 separate farms owned and operated by independent contractors. Pursuant to a standard contractual arrangement, Bayside provides each such farm with chicks, feed, medicine, fuel, litter, and vaccine. Bayside retains title to the chicks and pays the farmer a guaranteed sum, plus a bonus based on the weight of the bird when

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grown, in exchange for the farmer's services in housing and caring for the chicks. Bayside delivers the chicks to the *302 independent farms when they are one day old and picks them up for processing about nine weeks later. During the nineweek period, the contract farmers feed the chicks with poultry feed delivered to their feedbins by Bayside drivers.

Bayside argues that the activity on the independent farms is part of Bayside's farming operation. The argument is supported by the pervasive character of its control over the raising of the chicks, its **580 ownership of the chicks, its assumption of the risks of casualty loss and market fluctuations, and its control over both the source and the destination of the poultry. In response, the Labor Board argues that the owners of the farms are independent contractors rather than employees of Bayside and therefore the farming activity at these locations is attributable to them rather than to Bayside.

- [6] The Labor Board has squarely and consistently rejected the argument that all of the activity on a contract farm should be regarded as agricultural activity of an integrated farmer such as Bayside. ⁹ This conclusion by the Board is one we must respect even if the issue might "with nearly equal reason be resolved one way rather than another." ¹⁰
- [7] *303 Even if we should regard a contract farm as a hybrid operation where some of the agricultural activity is performed by Bayside and some by the owner of the farm, we would nevertheless be compelled to sustain the Board's order. For the activity of storing poultry feed and then using it to feed the chicks is work performed by the contract farmer rather than by Bayside. Since the status of the drivers is determined

by the character of the work which they perform for their own employer, the work of the contract farmer cannot make the drivers agricultural laborers. And their employer's operation of the feedmill is a nonagricultural activity. ¹¹ Thus, the Board properly concluded that the work of the truck drivers on behalf of their employer is not work performed "by a farmer" whether attention is focused on the origin or the destination of the feed delivery.

[8] The Board's conclusion that these truck drivers are not agricultural laborers is based on a reasonable interpretation of the statute, is consistent with the Board's prior holdings, ¹² and is supported by the Secretary of Labor's construction of s 3(f). ¹³ **581 Moreover, the conclusion applies to but one *304 specific instance of the "(m)yriad forms of service relationship, with infinite and subtle variations in the terms of employment, (which) blanket the nation's economy," ¹⁴ and which the Board must confront on a daily basis. Accordingly, regardless of how we might have resolved the question as an initial matter, the appropriate weight which must be given to the judgment of the agency whose special duty is to apply this broad statutory language to varying fact patterns requires enforcement of the Board's order. ¹⁵

The judgment of the Court of Appeals is

Affirmed.

All Citations

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Footnotes

- * The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.
- Bayside Enterprises, Inc., and its wholly owned subsidiary Poultry Processing, Inc., are operating corporations; the subsidiary Penobscot Poultry Co. is apparently inactive.

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- The drivers are represented by Truck Drivers, Warehousemen and Helpers Union, Local No. 340, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. That local and the Amalgamated Meatcutters Local 385 jointly represent employees in petitioners' processing plant.
- 3 216 N.L.R.B. 502, enf'd, 527 F.2d 436 (1975). The Board's order requires Bayside to bargain with the union.
- NLRB v. Strain Poultry Farms, Inc., 405 F.2d 1025 (CA5 1969); NLRB v. Ryckebosch, Inc., 471 F.2d 20 (CA9 1972).
- 5 49 Stat. 449, as amended, 29 U.S.C. s 151 et seq.
- Annually since 1946, Congress, in riders to the Appropriations Acts for the Board, has tied the definition of "agricultural laborer" in s 2(3) of the NLRA to s 3(f) of the FLSA. The latest such rider (90 Stat. 23) provides in relevant part as follows:
 - "Provided, That no part of this appropriation shall be available to organize or assist in organizing agricultural laborers or used in connection with investigations, hearings, directives, or orders concerning bargaining units composed of agricultural laborers as referred to in section 2(3) of the Act of July 5, 1935 (29 U.S.C. 152), and as amended by the Labor-Management Relations Act, 1947, as amended, and as defined in section 3(f) of the Act of June 25, 1938 (29 U.S.C. 203) "
- "First, there is the primary meaning. Agriculture includes farming in all its branches. Certain specific practices such as cultivation and tillage of the soil, dairying, etc., are listed as being included in this primary meaning. Second, there is the broader meaning. Agriculture is defined to include things other than farming as so illustrated. It includes any practices, whether or not themselves farming practices, which are performed either by a farmer or on a farm, incidentally to or in conjunction with 'such' farming operations." Farmers Reservoir & Irrigation Co. v. McComb, 337 U.S. 755, 762-763, 69 S.Ct. 1274, 1278, 93 L.Ed. 1672.
- These operations are conducted by the subsidiary, Poultry Processing, Inc., which employs about 20 workers at its feedmill and about 380 at its processing plant in Belfast, Me.
- The Board has 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." Imco Poultry, 202 N.L.R.B. 259, 260 (1973), citing Strain Poultry Farms, Inc., 160 N.L.R.B. 236 (1966); 163 N.L.R.B. 972 (1967), enf. denied, 405 F.2d 1025 (CA5 1969); Victor Ryckebosch, Inc., 189 N.L.R.B. 40 (1971), enf. denied, 471 F.2d 20 (CA9 1972). Cf. Norton & McElroy Produce, Inc., 133 N.L.R.B. 104 (1961).
- This is an instance of the kind contemplated by Mr. Justice Frankfurter in his concurrence in Farmers Reservoir & Irrigation Co., supra, 337 U.S. at 770, 69 S.Ct. at 1282:

 "Both in the employments which the Fair Labor Standards Act covers and in the exemptions it makes the Congress has cast upon the courts the duty of making distinctions that often are bound to be so nice as to appear arbitrary in relation to each other. A specific situation, like that presented in this case, presents a problem for construction which may with nearly equal reason be resolved one way rather than another."
- The Board has found in comparable situations that delivery is incidental to the feedmill operation and therefore not an agricultural activity. McElrath Poultry Co., 206 N.L.R.B. 354, 355 (1973), enf. denied, 494 F.2d 518 (CA5 1974); Samuel B. Gass, 154 N.L.R.B. 728, 732-733 (1965), enf'd, 377 F.2d 438 (CA1 1967).
- Samuel B. Gass, supra; Strain Poultry Farms, Inc., supra; Victor Ryckebosch, Inc., supra; Abbott Farms, Inc., 199 N.L.R.B. 472 (1972), enf. denied, 487 F.2d 904 (CA5 1973); Imco Poultry, supra; McElrath Poultry Co., Inc., supra.

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- In 1961 the Wage and Hour Division of the Department of Labor issued an interpretative bulletin which remains effective today. It reads, in pertinent part:
 - "Contract arrangements for raising poultry.
 - "Feed dealers and processors sometimes enter into contractual arrangements with farmers under which the latter agree to raise to marketable size baby chicks supplied by the former who also undertake to furnish all the required feed and possibly additional items. Typically, the feed dealer or processor retains title to the chickens until they are sold. Under such an arrangement, the activities of the farmers and their employees in raising the poultry are clearly within section 3(f). The activities of the feed dealer or processor, on the other hand, are not 'raising of poultry' and employees engaged in them cannot be considered agricultural employees on that ground. Employees of the feed dealer or processor who perform work on a farm as an incident to or in conjunction with the raising of poultry on the farm are employed in 'secondary' agriculture (see ss 780.137 et seq., (explaining that work must be performed in connection with the farmer-employer's own farming to qualify as 'secondary' agriculture by a farmer) and Johnston v. Cotton Producers Assn., 244 F.2d 553)." 29 CFR s 780.126 (1975).
- ¹⁴ NLRB v. Hearst Publications, 322 U.S. 111, 126, 64 S.Ct. 851, 858. In that opinion, id., at 131, 64 S.Ct., at 860, the Court stated:
 - "But where the question is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially, the reviewing court's function is limited. Like the commissioner's determination under the Longshoremen's & Harbor Workers' Act, that a man is not a 'member of a crew' (South Chicago Coal & Dock Co. v. Bassett, 309 U.S. 251, 60 S.Ct. 544, 547, 84 L.Ed. 732) or that he was injured 'in the course of employment' (Parker v. Motor Boat Sales, Inc., 314 U.S. 244, 62 S.Ct. 221, 222, 86 L.Ed. 184) and the Federal Communications Commission's determination that one company is under the 'control' of another (Rochester Telephone Corp. v. United States, 307 U.S. 125, 59 S.Ct. 754, 83 L.Ed. 1147), the Board's determination that specified persons are 'employees' under this Act is to be accepted if it has 'warrant in the record' and a reasonable basis in law." (Footnotes omitted.)
- Cf. NLRB v. United Insurance Co., 390 U.S. 254, 260, 88 S.Ct. 988, 991, 19 L.Ed.2d 1083; Universal Camera Corp. v. NLRB, 340 U.S. 474, 488, 71 S.Ct. 456, 464, 95 L.Ed. 456; NLRB v. Coca-Cola Bottling Co., 350 U.S. 264, 269, 76 S.Ct. 383, 386, 100 L.Ed. 285.

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