BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

MAAG EGG RANCHES
RAYMOND C. AND BERNICE MAAG, DBA
(Petitioner-Respondent)

DEPARTMENT OF EMPLOYMENT
(Appellant)

PRECEDENT
TAX DECISION
No. P-T-13
Case No. T-66-72

The Department of Employment has appealed from Referee's Decision No. S-T-1161, which granted the petitioner's petition for reassessment of unemployment insurance contributions with respect to wages paid from April 1, 1963 through December 31, 1964. Both parties have submitted written argument.

STATEMENT OF FACTS

During the period from April 1, 1963 through December 31, 1964 and for some time before that, the petitioner operated a poultry ranch in the state of California, producing eggs for human consumption. At all times pertinent to this appeal, it appears that the petitioner's employees who engaged in raising and caring for the poultry, maintaining the poultry enclosures, and gathering the eggs from these enclosures, were in agricultural labor, and that unemployment insurance contributions were not payable with respect to the wages of those employees.

The assessment which gave rise to the present proceeding was based on the contention of the Department of Employment that such contributions were payable with respect to wages paid for services performed in, or in connection with, the petitioner's egg-processing plant, because the majority of the eggs processed were not produced by the petitioner. The petitioner contends that such services were exempt as agricultural labor, on the ground that they were performed "on a farm."

All the evidence in the record was presented by the petitioner. The petitioner's testimony and documentary evidence explained the operations as set forth below.

The eggs were gathered and taken from the chicken houses to a separate building located on the petitioner's property. Only processing occurred in this building. Persons working on the farm gathering eggs and performing other farming duties did not work in the processing portion of the operation. The petitioner considered his producing and processing operations to be two separate operations.

From fourteen to fifteen workers were regularly employed solely in the processing plant, processing 700 to 800 cases of eggs per week. Title to the eggs remained in the producer until the distributor received the eggs on its trucks at the processing plant after processing.

At the location in question, the petitioner began processing eggs produced on his own farm in 1954. In 1960 he began processing eggs produced by others. Beginning in the second quarter of 1963, generally more than half of the eggs processed had been produced by others. Petitioner testified that during this time there were pay periods in which less than half of the eggs processed were produced by outsiders, but he did not identify any such pay periods. Petitioner testified that about 70 percent of the eggs processed were produced by producers other than the petitioner. The distributor paid the producers for production and paid the petitioner directly for all processing.

In the separate building which constituted the egg-processing plant, employees and machinery washed, candled, weighed, graded, culled, and packed the eggs into special containers according to the needs of various customers and to show various sales-name labels. Dates were coded onto these, oil was applied, and these containers were placed in larger shipping containers. The petitioner also bought, "canned," and resold some eggs; bought, broke, froze, and resold about 2 percent of his total processing output; and did some loading of retail trucks for the distributor.

The office staff consisted of one bookkeeper, whose work each week related to both the farm operation and the processing operation. At least 80 percent of her time was devoted to the processing operation.

The petitioner had some question in his mind whether the processing plant operation was subject to unemployment insurance contributions. He asked other private individuals and members of the "California Farm Bureau," which is not an agency of the State of California, but did not ask anyone in the Department of Employment. He also apparently had access to some written material from the Department of Industrial Relations, but the petitioner did not offer this material as evidence and the record does not reveal its content.

The California Inspection Rating Bureau classified the petitioner's farm and processing plant operations as agricultural for workmen's compensation insurance rate purposes. In its report this agency found:

1. That of the eggs processed by the petitioner, the petitioner produced 30 percent and other producers produced 70 percent;

2. That (a) poultry raising (apparently including egg production), (b) egg processing, and (c) the clerical office, were each physically separated in separate buildings; and

3. That no interchange of labor occurred among these three activities, although interchange of labor did occur between processing of eggs produced by the petitioner and those from other producers.

A map accompanying the report showed the plant separated from the farm by petitioner's private road. Attached payroll information showed that the egg-processing plant employed more than twice as many employees at a total payroll more than twice as large as the farm operation consisting of poultry raising and egg production. Egg processing, egg production, and the associated clerical service constituted substantially all the economic activities on the petitioner's premises.

The petitioner's testimony generally corroborated the contents of the report and the accompanying map.

The Inspection Rating Bureau gave as the basis of its rating that, ". . . regardless of the percentage of eggs being candled on a fee basis, there is a part of the normal poultry ranching operation being conducted at the same time as the commercial activities. Therefore, we have no other alternative but

to assign the entire remuneration developed within the egg candling section to the single Manual classification . . . 'Farms - Poultry Raising-E.T.C.-'."

REASONS FOR DECISION

Section 976 (all section references herein are to the Unemployment Insurance Code except as otherwise noted) requires the payment of "employer contributions" based upon wages paid for "employment." Section 601 provides that employment means "service . . . performed for wages . . . ." Certain services, however, are specified to be excluded services (sec 625 et seq.); i.e., though performed for money they are not considered employment as that term is used in section 976.

The exclusion which is involved in the present case is that for agricultural labor, which is covered in sections 625 through 628. These sections provide as follows:

> "625. 'Employment' for the purposes of this part does not include agricultural labor.
>
> "626. Agricultural labor includes all services performed on a farm in the employ of any person:
>
> "(a) In connection with the preparation, care and treatment of farmland, including leveling for agricultural purposes, plowing, disking, and fertilizing the soil.
>
> "(b) In connection with the sowing and planting of any agricultural or horticultural commodity.
>
> "(c) In connection with the care of any agricultural or horticultural commodity. As used in this subdivision 'care' includes, but is not limited to, cultivation, irrigation, and weed control, thinning, heating, fumigating, spraying, and dusting.
>
> "(d) In connection with the harvesting of any agricultural or horticultural commodity. As used in this subdivision 'harvesting' includes, but is not limited to, picking, cutting, threshing, knocking off, field chopping, bunching, baling (including hay baling), field packing, and placing in field containers or in the vehicle in which the commodity will be hauled on the farm or to the place of first processing. By way of illustration, the placing of cotton in picking bags or other

containers or vehicles, the field packing of berries and table and shipping grapes, the field packing of lettuce and other vegetables, the sacking of grain and the sewing of such sacks of grain, are included within the term 'harvesting' as used in this subdivision.

"(e) In connection with the assembly and storage of any agricultural or horticultural commodity. As used in this subdivision 'assembly and storage' includes, but is not limited to, loading, roadsiding, banking, stacking, binning, and piling.

"(f) In connection with the raising, feeding and management of livestock, mink, poultry, rabbits and bees, including, but not limited to, herding, housing, hatching, milking, shearing, handling eggs and extracting honey.

"627. Agricultural labor includes all services performed in the employ of the owner or tenant of a farm:

"(a) In connection with the drying, processing, packing, packaging, handling, grading, storing, freezing, transporting to delivery point or point of first processing, and marketing of any agricultural or horticultural commodity the major part of which was produced by such owner or tenant.

"(b) In connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment if the major part of such services are performed on a farm in connection with ordinary farming operations.

"(c) The provisions of subdivisions (a) and (b) are not applicable with respect to services performed in connection with commercial canning or commercial freezing operations or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption, or to manufacturing or commercial operations as distinguished from ordinary farming operations.

"628. As used in sections 626 and 627 the term 'farm' includes, among others, stock, mink, dairy, poultry, fruit and truck farms, plantations, ranches, ranges, apiaries, orchards, vineyards, nurseries, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities.

If services performed in the employer's processing plant are to be exempt under section 626(f), they must have been performed on a farm. The statutory definition of a farm for this purpose emphasizes the particular structure (if any) in which the service is performed, and the use to which that structure is put. Thus, in Tax Decision No. 2002, this board held that a cattle auction yard on premises otherwise used as a dairy farm was nevertheless not itself a farm, and services performed in milking the cattle in the auction yard were not services performed "on a farm."

The same principle has been applied in the opposite situation. For example, in Tax Decision No. 1430 this board found that services performed in a small goat dairy were agricultural services performed "on a farm" even though the dairy was part of the grounds of a larger institution which was not a farm.

Similarly, a Pennsylvania Superior Court has held that service in a retail outlet on the owner's farm was in reality "service in a retail store" and therefore not exempt agricultural labor, even though products sold included dairy products, eggs, poultry, and meat produced by the owner on this farm (Haydon v. Board of Review (1962), 198 Pa. Super. 322, 182 A. 2d 70). The court reasoned in effect that such service did not constitute rising, harvesting, or management of poultry, because it was concerned with preparation for retail sale and distribution rather than with preparation for shipment to market.

We may conclude that if the primary purpose to which a structure and the activities in that structure are devoted is not raising agricultural or horticultural commodities, the services in that structure are not performed "on a farm," even though other parts of the surrounding land may be devoted to agricultural uses.

The mere location of the structure in which the egg-processing occurred in the present case, therefore, does not determine whether the services were performed on a farm, particularly since it appears from the record that this structure was separate from those in which the chickens were fed and the eggs brought into existence or completely "grown" so far as the living animal processes were concerned.

We think the term "raising" used in section 628 refers to this process of growing or causing a life process to proceed to the desired point (see Webster's Seventh New Collegiate Dictionary [1] raise 5, p.

707, and grow vt 1, p. 369). While various activities may be agricultural in the proper context, the fundamental part of that context is that the primary purpose involved should be this growing or rising of a product in living plant or animal development. The part of the statutory exemption defined in section 626 is limited to services performed on a plot, in an enclosure, or in a structure devoted primarily to that purpose. The associated activities of preparation, harvesting, and gathering are exempt under that section only if done on a plot, in an enclosure, or in a structure devoted primarily to that growing, and not if done on a plot, in an enclosure, or in a structure devoted primarily to some other purpose. The services mentioned in section 627(a) are exempt as agricultural only if performed in the employ of the owner or tenant of a place devoted primarily to such growing, and only if the major part of the commodities so handled were produced, i.e., grown by that owner or tenant.

Mere care, handling, or management of an agricultural commodity after it has reached the desired state of living development is no longer growing, raising, or producing in the sense in which these words are used above, even though such care and handling in some circumstances remains agricultural.

Although statutes vary from state to state and from year to year, the decision In re Perkins (1961), 14 App. Div. 2d 185, 217 N.Y.S. 2d 705, is persuasive. The taxpayer in that case raised poultry and eggs on a farm in the state of New York. He sold these agricultural products together with other eggs and poultry which he bought from other producers. Among the eggs which he handled, the proportions produced by himself varied from time to time. At one point, eggs produced on the taxpayer's farm constituted about 20 percent of the eggs which he handled. The New York law exempted as agricultural labor, among other categories, service "performed on a farm, in the employ of any person," in connection with raising and caring for poultry, and in handling, packing, processing, storing, or delivering to market any agricultural commodity, "but only if such service is performed as an incident to farming operations."

The New York court held that the part of the service involving goods produced by others than the taxpayer was not in connection with any agricultural operation contemplated by the statute and that such service could not reasonably be said to have been incident to farming operations. Since this nonagricultural proportion of the operation was "relatively huge in volume" compared to the remaining percentage of agricultural commodities handled from the taxpayer's own production,

the primary purpose of the sales operation was not agricultural. The court concluded that services in that operation were not exempt as agricultural labor. To us the significance of the case is that an operation involving handling farm products 80 percent of which were produced by other farmers on other plots was held to be essentially commercial by virtue of those facts, even though the operator was a farmer and the operation occurred on a parcel which was otherwise used as a farm.

Again, in Benefit Decision No. 6736, the Appeals Board held that an alfalfa-processing plant was a commercial rather than an agricultural enterprise, although physically located on the premises of the employer's farm, where a large minority of the land producing the alfalfa processed in the plant was not owned or leased by the plant owner, even though the plant owner evidently did produce the major part of the alfalfa handled in the plant.

As pointed out in Benefit Decision No. 6736, in our citation of the decision in Stivers v. Department of Employment (1954), 42 Cal. 2d 486, 267 P. 2d 792, the test under the statute is not the "principal purpose of the enterprise" (see page 12 of Benefit Decision No. 6736). One of the tests is whether the services performed by the employees were essentially manufacturing or commercial on one hand or carried on as an incident to "ordinary farming operations" on the other. This test is mentioned in the Stivers case, and appears now in somewhat different words in subdivision (c) of section 627, quoted above. This test was the primary one in Benefit Decision No. 6736.

But if the commercial nature of an enterprise is too uncertain or partial to be a distinct basis for denying exemption under this test, a more objective test is used, set forth in subdivision (a) of section 627, resolving the matter on the basis of actualities rather than hopes. Not only are actual percentages easier to ascertain, but reality may differ significantly from hopes, and a farmer may find himself driven into commercial activities to assure marketing of his products, just as a manufacturer or merchant might be forced into farming or mining to assure himself of adequate sources of supply. Such commercial activity would not be agricultural merely because done by a person also engaged in farming, any more than the farming operations would cease to be agricultural because done by a person also engaged in nonagricultural enterprises.

The present petitioner's egg processing was done in a structure distinct from that in which the eggs were grown, raised, or produced. In the processing plant the primary function was not growing or rising, in the sense meant by section 628 of the code, but processing, packing, packaging, grading, and incidentally handling, storing, and freezing, in the sense of those words as used in section 627(a). Services of this type are agricultural if done in the employ of the farmer, but only if the services are rendered in connection with agricultural commodities of which that farmer has produced or "raised" the major part. Otherwise such activities are apparently regarded as "commercial" (Roberts v. Unemployment Compensation Commission (1958, Ore.) 332 P. 2d 1067; Stivers v. Department of Employment (1954), 42 Cal. 2d 486, 267 P. 2d 792; In re Perkins, cited above; In re Thompson (1941), 262 App. Div. 792, 27 N.Y.S. 2d 514, affirmed 288 N.Y. 594, 42 N.E. 2d 603; Industrial Commission v. Growers Equipment Company (1943), 152 Fla. 710, 12 S. 2d 889; B.C. Rogers & Sons, Inc. v. Employment Security Commission (1967), ____ Miss.____ , 193 S. 2d 564; Haydon v. Board of Review, cited above; Appeals Board Tax Decisions Nos. 1459, 1555, and 1676; see also Tax Decisions Nos. 705, 773, 778).

It would therefore seem to follow that the processing plant, since it was a separate structure and operation not primarily engaged in growing or raising the agricultural commodity, was not a farm, and services performed in it were not performed on a farm. Hence, section 626 does not apply in the present case. It is notable in this context that the major part of the present petitioner's entire payroll was engaged in the processing rather than in the farming services, and that, within the processing function, the percentage of outsiders' produce handled was nearly as great (70 percent) as in the Perkins case (80 percent), cited above.

The same conclusion follows from a look at the kinds of services listed in sections 626 and 627(a). While the legislature might have chosen to have these two definition sections overlap, an examination of each of these sections as a whole suggests that the legislature chose not to do so.

The services mentioned in section 626 refer to those occurring during the period of growth or live development, the harvest or severance, and the on-farm gathering or assembly and storage of the raw and unprocessed product, together with whatever services are accomplished in the field during these activities.

Some of the words can only mean this. For example, let us consider the subsections in order:

(a) Treatment of farmland does not ordinarily involve changing the condition of commodities already gathered;

(b) The same is true of sowing and cultivating;

(c) The "care" of agricultural commodities is a broad expression, but the examples given make it clear that the legislature was referring to care during the process of raising, not in a factory, processing plant, or grocery store on the farm parcel after severance;

(d) Harvesting and the associated activities are clearly within the period which we have described above, as are
(e) Assembly and storage; and

(f) Raising, hatching, milking, shearing, and perhaps extracting honey. We have already made it clear that incidental housing, feeding, and management of animal life are not intended to be covered by section 626 of the code where the primary purpose of the structure or enclosure involved is not "raising" the commodity; i.e., completing the life portion of production (see Tax Decision No. 2002).

We must therefore conclude that the very general words "care," "feeding," "managing," "herding," "housing," and "handling" used in section 626 are meant to apply to those activities, only within the span of time or portion of production ending with the gathering and storage of the agricultural products from the harvest (again, see Tax Decisions Nos. 705, 773, 778, 1459, and 2002, all cited previously; also see California Employment Commission v. Kovacevich (1946), 27 Cal. 2d 546, 165 P. 2d 917; Stivers v. Department of Employment, cited above; and Irvine Co. v. California Employment Commission (1946), 27 Cal. 2d 570, 165 P. 2d 908, which also refers to "work which is necessary and essential to and directly connected with the growing of agricultural crops . . . ." (Emphasis added) and services performed "for the sole purpose of producing agricultural crops. . . .").

All subsequent activities that can be treated as agricultural under the unemployment insurance laws are set forth in section 627(a). There again the broad word "handling" appears. If given its broadest interpretation, this word would encompass all the other activities mentioned in section 627(a), making the remainder of the list mere surplusage. A word intended to have such broad meaning as to summarize the rest would not ordinarily be buried in the midst of the list which it is intended to summarize. Here again we therefore

conclude that "handling" refers to those instances and kinds of handling which occur during portions of the total production-to-consumption chain comparable to the other specific processes named in the same section or subsection; i.e., after on-farm assembly and storage but not after "delivery to a terminal market for distribution for consumption," except that commercial canning, commercial freezing, manufacturing, or other commercial operations are not included as agricultural.

Thus, the definition of a farm, the context in which the word "handling" appears, and its appearance in two places, evidently with somewhat different and mutually exclusive meanings, all suggest that the operation of processing, packing, packaging, grading, and incidentally storing, freezing, and otherwise handling eggs in the petitioner's separate processing plant did not constitute handling eggs on a farm within the meaning of those words as used in section 626 of the code.

To be exempt as agricultural labor, the services in the plant must therefore satisfy the requirements of section 627, subdivision (a). These services clearly satisfy the requirement that they be performed in the employ of the owner or tenant of a farm. They clearly do not satisfy the requirement that the major part of the products processed be produced by that owner or tenant. The services are therefore not exempt from contributions as agricultural labor as defined under either section 626 or 627 of the code.

It is true that pasteurizing and bottling (which seems somewhat analogous in milk production to washing, candling, grading, and packing in egg production) have been held to be a necessary part of milk production and therefore exempt as agricultural (State v. Christensen (1943) 18 Wash. 2d 7, 137 P. 2d 512). Two important differences, however, distinguish that case from the one before us. One is that the word "processing" was not then in the Washington statute, on which the Christensen decision is based. That word evidently covers the category into which the court felt that pasteurizing and bottling would fall (137 P. 2d at page 523). We would agree.

The present petitioner's egg-processing plant operations would fall into the same category of "processing," since both milk-house and egg-processing services involve removing impurities, putting the product into containers, satisfying legal requirements, but leaving the basic product in substantially unchanged form. Processing under the present California law, however, is explicitly placed in section 627(a) of the code, and so must be judged under that provision of the law.

The other important difference is that most of the milk sold in the Christensen case was produced by the processors on their own farms. The assessment in the present case was levied precisely because this was not true of the present petitioner.

The petitioner contends in part:

> "One of the significant terms involved in the present case is 'handling eggs'. This term is summarily disposed of by the department in its Opening Brief. Yet, the department incorporates in its Brief the finding of fact by the referee wherein the referee defines the handling of eggs as involving a series of operations such as cleaning, candling, grading and packaging.
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> "The term 'handle' is not one without significant definition in parts of other California codes. Thus, in section 1300.12(e) of the California Agricultural Code, 'handler' is defined as
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> > " ' "Handler" is any person engaged within this state as a distributor in the business of distributing an agricultural commodity in intrastate commerce, or any person engaged as a processor in the business of processing an agricultural commodity.'
>
> "Subsection (1) of the same section defines 'to handle' as engaging in the business of a handler as herein defined.
>
> "Section 2054 of the Agricultural Code defines handler as any person receiving agricultural commodities from a producer for the purpose of marketing the same.
>
> "Lastly, 'agricultural commodity' is defined to include eggs by section 2046 and section 1300.12(c) of the Agricultural Code. Although there appear to be no cases where a decision has been made as to whether or not the term 'handling' should be used in a 'popular' and not 'generic' sense, the Courts have construed in its popular sense. See Coast Oyster Co. vs. Perluss (1963) 32 Cal. Rptr. 740, 218 C.A.2d 492.
>
> "The term 'handling eggs' has a particular significance to the poultry business and to all persons who are familiar and cognizant of the nature of the business. Referee Gilson's findings reflect this as pointed out above. It follows that our legislature in drafting section 626(f) of the Unemployment Insurance Code was familiar with the characteristics of the egg industry when using the term 'handling eggs'."

The department contends in part:

"The outcome of the present case should be determined by section 627 of the Unemployment Insurance Code. Sections 626 and 627 provide the complete definition of 'agricultural labor' (Coast Oyster v. Perluss (1963) 218 Cal. App 2d 492, 32 Cal. Rptr. 740). Section 626 exempts certain services performed on a farm in the employ of the owner of the farm. Section 627 exempts services performed in the employ of the owner of the farm on which the major part of the goods processed were raised. It is a standard rule of statutory construction that whenever possible effect should be given to the statute as a whole and to its every section and clause so that no part or provision will be useless or meaningless (45 Cal. Jur. 2d 626). Therefore, section 626 should not be given such a broad interpretation that section 627 becomes merely redundant.

"Subsection (f) of section 626 governs the 'handling' of eggs. The 'handling' of eggs relates to the gathering of the eggs from the chickens preparatory to sending them to the processing plant for processing. Otherwise, subdivision (a) of section 627 would be merely redundant. Subdivision (a) of section 627 provides for the processing, etc. of an agricultural commodity. The petitioner herein employed individuals to grade, clean, sort and pack eggs in the processing plant. These activities are separate from the gathering of the eggs to be sent to the processing plant. Hence, subdivision (a) of section 627 should govern the status of the employees involved herein."

We cannot agree with the contention of the department that a broad definition of egg handling in section 626 would make section 627, subsection (a), redundant. On the other hand, we cannot agree with the petitioner's view of the broad or technical definition of the same term. The basis of the petitioner's argument is the special meaning of "handling" in the Agricultural Code, and the unique nature of eggs in that they are edible immediately when laid.

The meaning of "handling" varies in different parts of the Agricultural Code, and the petitioner has not suggested by what standard one of these three definitions should be selected as applying to the Unemployment Insurance Code. Moreover, some of these meanings encompass clearly commercial activities.

The meaning of a term in a law must be understood in terms of the purposes of the law. The purpose of the Agricultural Code is regulation or assistance of agricultural industry, and effectively doing this may require regulation or assistance of related nonagricultural activities.

The purpose of the Unemployment Insurance Code is to provide broad unemployment insurance coverage, to reduce the problems of unemployment (section 100). Strictly agricultural activities were originally exempted on the basis of the argument that some agriculturists would not be able to keep adequate records (Carmichael v. Southern Coal and Coke Company, 301 U.S. 495, 81 C. Ed. 1245, 57 S. Ct. 868; California Employment Commission v. Butte County Rice Growers Association (1944), 25 Cal. 2d 624, 154 P. 2d 892), and presumably that others would suffer a competitive disadvantage if they were treated differently. These purposes require a narrower construction of the term "agriculture." It is not enough that the terms used in a statute, given the broadest possible meaning, would include the business in question; The question is whether the legislature so used them (Irvine Co. v. California Employment Commission (1946) 27 Cal. 2d 570, 165 P. 2d 908). The purposes of the Agricultural Code thus differ from those of the Unemployment Insurance Code, and we are not persuaded that the word "handling", in reference to eggs, was intended to have in section 626, or in section 627, any of the meanings used in various parts of the Agricultural Code.

The evidence does not show, and we cannot find on the basis of judicial or official notice, that eggs are unique among agricultural commodities in being edible as soon as "harvested" or gathered. The same may be true of milk; honey; many types of fruit, berries, and nuts; a number of types of vegetables; and some other commodities. It is not generally true of grains. Some vegetables and most animal flesh products (meat, fish, poultry, etc.) are normally cooked in this country before eating, but then eggs in this country are also eaten cooked more often than raw. There is no convincing reason to believe that the legislature intended to treat egg production any differently from other comparable industries.

The petitioner contends that we are bound to accept the referee's findings if they are based upon substantial evidence, cited Leming v. Oilfields Trucking Company (1955), 44 Cal. 2d 343, 382 P. 2d 23, which does not apply to administrative proceedings.

The California Supreme Court, however, has stated that Article VI, section 1 of the California State Constitution does not permit a state body or officer to make a final determination of fact which would be binding if

supported by substantial evidence, unless such state body or officer has received a grant of judicial power by the constitution itself (Standard Oil Company v. State Board of Equalization (1936), 6 Cal. 2d 557, 59 P. 2d 119; Drummey v. State Board of Funeral Directors, etc. (1939), 13 Cal. 2d 75, 87 P. 2d 848; as to a single officer, cf. Pittenger v. Collection Agency Licensing Bureau (1962), 208 Cal. App. 2d 585, 25 Cal. Rptr. 324, 325, where the trial court made its own independent findings, and the appellate court affirmed without comment on this point; the reasoning is the same whether the official agency is a board or individual officer).

In Drummey the court stated at page 853:

> "... The state constitutional provision discussed, supra, prohibits the conferring of judicial power on such administrative boards. If it should be held that the board's action ... is binding on the courts, if such action is predicated on conflicting evidence, we would be necessarily holding that such board is exercising at least quasi-judicial powers." It is the essence of judicial action that finality is given to findings based on conflicting evidence. If the statute be so construed it would violate the state Constitution."

The referee is a state officer whose powers are derived solely from statute or regulation (Letter Opinion of California Attorney General, NS. 3674, July 28, 1941). The referee does not have the inherent judicial power of local agencies, and the state constitution grants him none. It follows that, having no judicial power; he cannot make a finding of fact which is binding if supported by substantial evidence. The findings of neither the referee nor this board have such finality (California Employment Commission v. Lund (1946), 76 Cal. App. 2d 567, 571, 173 P. 2d 379, Thomas v. California Employment Stabilization Commission (1952), 39 Cal. 2d 501, 504, 247 P. 2d 561).

Moreover, there is nothing in the statute or rules or history of either which would suggest that the legislature ever intended that the review of a referee's decision by the Appeals Board should be restricted by the substantial evidence rule. The board, and the two commissions preceding it, formerly had original jurisdiction over petitions for reassessment and made the only decision after hearing provided in those cases (see, for example, Stats. 1953, Chapter 308). The board is obliged under law to include a statement of the facts in its decisions (section 409 of the code, fourth paragraph), which implies that it is to make a finding of facts, and, as trier of fact, necessarily must weigh the evidence. At no point does the legislature appear to have withdrawn this power to reweigh the evidence.

In section 1336 of the code, the board is empowered to receive additional evidence and by implication to make findings of fact. Again, it is appropriate to infer that as trier of fact the board would have the power to weigh evidence. While section 1336 is not included within the chapter involving reassessment proceedings and appeals arising from them, no different scope of authority is expressed in that chapter. Aside from conducting the hearing, the powers of the board in issuing a decision on a reassessment matter are essentially the same as those conferred on the referee (section 1134 of the code).

Under section 1951 of the code, the manner in which petitions shall be presented and the conduct of hearings and appeals shall be in accordance with rules prescribed by the Appeals Board. Those rules do not limit the scope of board review of a referee's decision; on the contrary, those rules include express authorization for taking additional evidence (Title 22, California Administrative Code, section 5109), which implies independent fact finding and hence independent weighing of evidence, just as in the limited trial de novo employed by courts in reviewing the board's decisions in administrative mandamus proceedings.

Furthermore, it would be unreasonable to suppose that the legislature would have intended that the board should be unable to reweigh evidence when review of its own decisions by a court would involve such reweighing (Thomas v. California Employment Stabilization Commission (1952), 39 Cal. 2d 501, 247 P. 2d 561).

It is true that the statute does not provide for judicial review of reassessment proceedings. The same issue (whether a tax is due in the amount of the assessment) may be brought before the courts by a civil proceeding instituted after payment of the tax and exhaustion of administrative remedies on a claim for refund (sections 1178 to 1182). Such a proceeding in court is a trial de novo (Empire Star Mines Company, Limited v. California Employment Commission (1946), 28 Cal. 2d 33, 168 P. 2d 686; Briggs v. California Employment Commission (1946), 28 Cal. 2d 50, 173 P. 2d 696; California Employment Stabilization Commission v. Lund (1946), 76 Cal. App. 2d 567, 173 P. 2d 379). Again, it would be unreasonable to believe that the legislature intended that the board be bound to accept the findings of a referee if it expected them to be overthrown upon a new trial in Superior Court.

Accordingly, we have consistently held that this board must reweigh the evidence and that upholding of the referee's findings will depend upon whether the referee's findings are or are not against the weight of the

evidence (Benefit Decisions Nos. 4829, 4830, 5070, 5479, 5954, 6444, 6483, and 6721).

In the last of these cases we pointed out why this is so. The substantial evidence rule applies to appellate courts, not so much because they have not seen the witnesses but probably primarily because their function is to review errors of law only. Since, as observed above, this board is also a trier of fact, such a limited scope of review is not appropriate for this board.

Since the statute only requires a hearing before the referee, however, the board has discretion to restrict its own scope of review to some extent, and has properly limited the submission and acceptance of further evidence on appeal to the board by rule (Title 22, California Administrative Code, sections 5109 and 5116) and policy.

As said in Drummey at page 854:

> ". . . This does not mean that the preliminary work performed by the [lower tribunal] in sifting the evidence and in making its findings is wasted effort. . . . The findings of the [lower tribunal] come before the [higher tribunal] with a strong presumption of their correctness, and the burden rests upon the complaining party to convince the [higher tribunal] that the [lower tribunal] decision is contrary to the weight of the evidence."

In making this evaluation in cases of conflicting oral testimony, we give full weight to the consideration that the referee has observed the witnesses, their demeanor, and their manner of testifying, and may have properly taken these into consideration in reaching his findings. Therefore, unless his findings are manifestly against the weight of the evidence in a case of such conflict in oral testimony, we would accept the referee's findings.

In the present case, however, the facts are not significantly in dispute. The referee's findings differ from ours primarily in using a different legal characterization of the facts (Yakov v. Board of Medical Examiners (1967), 250 ACA 271, 58 Cal. Rptr. 644). The question before us is essentially a legal one of statutory construction and application. As the California Supreme Court pointed out in Isenberg v. California Employment Stabilization Commission (1947), 30 Cal. 2d 34, 40, and 180 P. 2d 11:

> "The contention that the question whether a person is an employee under . . . the Unemployment Insurance Act [now code] is wholly one of fact, even where the evidence is not in conflict and not reasonably susceptible of conflicting inferences, is untenable. Under such a rule there would be nothing to prevent conflicting interpretations of identical facts . . . . Such a rule would make effective [or fair] enforcement of the Unemployment Insurance Act impossible."

The petitioner also contends that classification for workmen's compensation insurance rate purposes controls the present decision. We do not agree. In the first place, the statutes do not establish any standard for distinguishing agricultural employments from others under present workmen's compensation laws. In the existing workmen's compensation statutes, there is no such classification.

Secondly, as we have pointed out above, the meaning of words in a statute must be gathered from the purpose of the statute. Even if the insurance report were a statutory enactment, it would not govern this case, because its purpose is different. The purpose of any present distinction between agricultural labor and other kinds of labor for workmen's compensation rate-making is to measure the cost of risk of injury of various degrees in that industry compared to other industries. Those activities which involve a given degree of risk of injury are not necessarily co-extensive with those activities which fall within the purposes of the agricultural exemption to the Unemployment Insurance Code.

While there may be a rough analogy between the programs sufficient to suggest similar interpretation of two statutory exemptions when neither was defined (Cannon v. Industrial Accident Commission (1959), 346 P. 2d 1, citing the Irvine case, cited above), the analogy is not adequate to require us to ignore the clear mandate of a statutory definition in favor of the determination of some other agency based on a different purpose in construing a nonstatutory classification which no longer involves an exemption.

Thirdly, and most significantly, the record shows distinctly that the standards used in determining the petitioner's agricultural status for workmen's compensation insurance rate-making differed from the statutory standards which we must apply. The difference lies at the heart of the very point at issue here. The compensation insurance determination was made on the basis that petitioner processed some of its own production, even though most of its processing may have been devoted to a commercial activity; the

statutory standard which we must apply is that the petitioner's operation is agricultural only if the major part of post-gathering processing is devoted to petitioner's own production.

Finally, we are not convinced that the purely formal question of the vesting of title would be determinative in deciding whether petitioner's egg-processing plant operations must be excluded from exemption under section 627 on the basis of the provision in subdivision (c) referring to "commercial canning or commercial freezing operations or any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption, or ... manufacturing or commercial operations as distinguished from ordinary farming operations." The commercial nature of operations involving processing of agricultural commodities of which as little as 20 percent were produced by others than the owner has been recognized by the Supreme Court (Stivers v. Department of Employment (1954), 42 Cal. 2d 486, 267 P. 2d 792, and in our Benefit Decision No. 6736).

Although bald assertions appear to the effect that the egg-processing operation was an integral part of and incidental to the producing of eggs, the description of the process in the record clearly shows a distinct operation, with an identifiable beginning and end, performed on a commercial scale, in a highly sophisticated industrial manner, in a structure separate and distinct from any structure containing the laying hens. This operation could be conducted at any location, it need not be done on the farm, and in fact a large proportion of the eggs which it processed were produced on farms of other farmers, so the principal activity of petitioner's processing operation was not connected with the petitioner's farm operations at all. Petitioner himself regarded it as a separate operation, which in some respects, at least, was a larger enterprise than petitioner's farming activities. We therefore conclude that the work in question was not service in agricultural labor under section 625 of the Unemployment Insurance Code.

We agree with the petitioner's contention that the classification of the bookkeeper's service depends on the classification of the other services in connection with the egg-processing plant. In view of the conclusions above, we find that her service is not exempt as agricultural labor.

The petitioner has not proved that any identifiable part of the services with respect to which the assessment was levied was performed in exempt agricultural labor. The petition for reassessment must therefore be denied.

DECISION

The referee's decision is reversed. The petition for reassessment is denied.

Sacramento, California, April 12, 1968.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

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