The problem with that ruling is that there was no information before the court on the question how the new regulation affected plaintiff. The mere fact that it did not apply to him is no answer. If the regulation barred a new purchaser of plaintiff's unit from admitting persons to his unit more than five feet tall, it is quite certain that plaintiff would be immediately affected by the shrinkage of the sales market for the unit. The resulting loss of value would give him the "sufficient stake and real adverseness" necessary to confer standing. *Crescent Pk. Tenants Assoc. v. Realty Eq. Corp. of N.Y.*, 58 *N.J.* 98, 107, 275 *A.*2d 433 (1971).

It may seem likely that investors are a relatively small number of the people seeking to buy condominium units, and that a person buying a unit to live in will not be put off by a regulation of this kind. However, my impressions of what seems likely furnish a shaky foundation for rulings of law. Neither party offered any evidence on the motion to show whether or to what extent the regulation would affect the salability or value of plaintiff's unit. In those circumstances, I would treat the matter of impact on plaintiff's rights, and therefore the matter of standing, as an unresolved issue of material fact, thus ruling out a summary judgment on that matter.

The Chancery Division made the alternate ruling that, even if plaintiff had standing to challenge the regulation, it should be upheld because reasonable as to purchasers with notice. That is not a sufficient ground to reject plaintiff's claim, which is that a new restriction enacted long after he bought his unit restricts the alienability of his property. If it does, and if there is an effect on value significant enough to invoke judicial protection, plaintiff has standing to make a claim. The question of enforceability against new buyers with notice is not involved.

214 N.J.Super. 425

I.B.T., LOCAL NO. 863, Plaintiff-Respondent,

v.

SEABOARD FARMS, a/k/a Ise Farms, Inc., Defendant-Appellant.

Superior Court of New Jersey, Appellate Division.

Submitted Nov. 13, 1986.
Decided Dec. 24, 1986.

An action was brought to determine whether designated union would be exclusive bargaining representative of employer's employees pursuant to 25 to 13 affirmative vote in consent election conducted by State Board of Mediation. The Superior Court, Chancery Division, Warren County, designated plaintiff union as exclusive bargaining representative, and employer appealed. The Superior Court, Appellate Division, Furman, P.J.A.D., held that: (1) agricultural workers in private employment were entitled to organize and bargain collectively, and (2) employer was not deprived of due process of law right to plenary hearing prior to entry of order setting terms of representation election.

Affirmed.

1. Labor Relations ⇐171

Private employees are vested with right to organize and bargain collectively.

2. Labor Relations ⇐171

Public employees are limited to right to organize and present grievances and proposals to representatives of their choosing.

3. Labor Relations ⇐176

Agricultural workers have right to bargain collectively as persons in private employment, regardless of fact that exercise of that right might cause farm animals and livestock to die through neglect, and eggs

and other persishable food products to spoil. N.J.S.A. Const. Art. 1, par. 19.

4. Constitutional Law ⇐275(5)

Employer was not deprived of due process of law right to plenary hearing prior to entry of order setting terms of representation election where no request for plenary hearing was brought below, court adopted slight modification recommendations for conduct of election by State Board of Mediation, and any disputes between parties about cut-off date or voter eligibility were not factual.

Rand, Algeier, Tosti, Woodruff & Frieze, Morristown, for defendant-appellant (Robert M. Tosti, of counsel; Ellen S. Bass, on the brief).

Zazzali, Zazzali & Kroll, Newark, for plaintiff-respondent (Paul L. Kleinbaum, on the brief).

Before Judges FURMAN, SHEBELL and STERN.

The opinion of the court was delivered by

FURMAN, P.J.A.D.

At issue on this appeal is whether agricultural workers in private employment are entitled to organize and bargain collectively under *N.J. Const.* (1947), Art. I, par. 19. We hold that they have that right and affirm.

The judgment below designated plaintiff union as the exclusive bargaining representative of defendant's employees pursuant to a 25 to 13 affirmative vote in a consent election conducted by the State Board of Mediation.

[1, 2] As recognized in *Johnson v. Christ Hospital*, 84 *N.J.Super.* 541, 546, 202 *A.*2d 874 (Ch. Div.1964), aff'd o.b. 45 *N.J.* 108, 211 *A.*2d 376 (1965), the State Constitution establishes two classes of employees only: persons in private employment and persons in public employment, that is, governmental employment, I *Proceedings of the N.J. Constitutional Convention of 1947*, pp. 328, 655. Private employees are vested with the right to organize and bargain collectively. Public employees are limited to the right to organize and present grievances and proposals through representatives of their choosing.

In *Johnson*, Judge Matthews in a comprehensive opinion struck down the hospital's argument that its employees should be classified as quasi-public employees and, as such, held not to be guaranteed the right of private employees to bargain collectively. According to the opinion, the minutes of the Constitutional Convention failed to disclose any separate consideration or reference to hospital or health service employees as a category. We similarly find upon review of the minutes of the Constitutional Convention no discussion of agricultural employees as a category and no evidence whatsoever that any person in private employment should be treated differently from any other person in private employment.

A primary distinction between the constitutional rights of private and public employees in this State is that the former have the right to strike, encompassed within their right to bargain collectively; the latter, without the right to bargain collectively, do not, *Board of Ed., Borough of Union Beach v. N.J.E.A.*, 53 *N.J.* 29, 36–37, 247 *A.*2d 867 (1968).

[3] Defendant on this appeal urges that the constitutional framers cannot have intended agricultural workers to have the right to strike because, if they had that right and exercised it, chickens, other farm animals and livestock might die through neglect; eggs and other perishable food products might spoil. In *Johnson*, concern that a strike by hospital employees might endanger health or even lives of hospital patients did not warrant a judicial interpretation reading an exception for hospital employees into the words "persons in private employment" in Art. I, par. 19. Defendant's argument is in derogation of the clear constitutional guarantee to agricultural workers of the right to bargain collectively

as persons in private employment and is, in our view, untenable.

Defendant does not raise a Federal preemption argument as such, in view of the exclusion of agricultural laborers from the National Labor Relations Act (NLRA), 29 *U.S.C.A.* § 151 *et seq.* Rather, defendant urges that we should adopt what it asserts to be the rationale behind that exclusion: the potential for disaster if the strike weapon is in the hands of agricultural laborers. Defendant's rationale is speculative, without authoritative support in legislative history or otherwise. As stated in *Willmar Poultry Co., Inc. v. Jones,* 430 *F.Supp.* 573, 578 (D.Minn.1977):

> The legislative history surrounding the exclusion of agricultural laborers from the NLRA's coverage is remarkable only because of its paucity. In fact, the legislative history of the NLRA seems to demonstrate that neither Congress nor virtually anyone else was much concerned with the problems of agricultural labor. *Morris, Agricultural Labor and National Labor Legislation,* 54 Calif.L. Rev. 1939, 1951 (1966).

Willmar Poultry rejected a turkey hatchery's argument of NLRA preemption barring State regulation of the labor rights of its workers. The Federal District Court concluded that nothing in the NLRA or its history indicated a national labor policy that agricultural employment relations should be wholly unregulated and left to "the unrestrained interplay of economic forces in the market place." *Id.* at 577.

[4] As an alternative argument, defendant urges a reversal on the ground that it was entitled to a plenary hearing prior to the trial court's determination of the composition of the bargaining unit and the cut-off date for voter eligibility for the representation election. No request for a plenary hearing was brought below. The trial court adopted with slight modifications the recommendations for the conduct of the election by the State Board of Mediation. The inclusion of part-time and clean-up employees in the bargaining unit was in accordance with defendant's position in a written memorandum to the State Board of Mediation. The cut-off date for voter eligibility was set at approximately one month preceding the election. Any disputes between the parties about the cut-off date were not factual. Under the circumstances, we cannot conclude that defendant was deprived of a due process of law right to a plenary hearing prior to entry of the order setting the terms of the representation election.

We affirm.

214 N.J.Super. 430

STATE of New Jersey, Plaintiff-Respondent,

v.

Ernest Jesse HAWKS, Defendant-Appellant.

Superior Court of New Jersey, Appellate Division.

Submitted Nov. 19, 1986.
Decided Dec. 26, 1986.

Defendant was convicted in the Superior Court, Law Division, Essex County, of second-degree conspiracy to commit aggravated assault, third-degree aggravated assault with firearm, second-degree possession of firearm for unlawful purpose, and third-degree possession of firearm without permit. Defendant appealed. The Superior Court, Appellate Division, Furman, P.J. A.D., held that act imposing mandatory extended term for second or subsequent conviction of firearms offense applied to defendant whose prior conviction of firearms offense occurred subsequent to commission of firearms offense for which he was sentenced.

Affirmed.