Madera, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

J. OBERTI, INC., J. OBERTI VINEYARDS, J. A. G. S. VINEYARDS, G. OBERTI SONS, OBERTI FARMS, LTD., FRANK OBERTI RANCHES, CHOWCHILLA VINEYARDS, A & D OBERTI, INC., and A. OBERTI RANCHES, Employer, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner.	Case No. 82-RC-11-F 9 ALRB No. 7

DECISION ON CHALLENGED BALLOTS

On October 25, 1982,[1/] more than 400 agricultural employees at the various olive operations of J. Oberti Inc., et al. (Employer) went on strike. On October 27, the United Farm Workers of America, AFL-CIO (UFW), filed petitions for the Agricultural Labor Relations Board (ALRB or Board) to conduct representation elections at the operations of the Employer where employees were on strike, requesting that elections be held within 48 hours of the filing. Pursuant to a stipulation between the parties, the bargaining unit description was amended to include all the agricultural employees of the Employer in the State of California rather than its employees at the ranches where strikes were in progress and a five-day expedited election was scheduled. On November 2, Board

[1/] All dates herein refer to 1982.

agents conducted a representation election, at which the official Tally of Ballots showed the following results:

UFW	249
No Union	90
Unresolved Challenged Ballots	244
Total	583
Void Ballots	3

At the election, 244 persons voted challenged ballots. Board agents challenged the ballots of 234 voters because their names did not appear on the eligibility list at the ranch at which they voted.[2/] The UFW challenged three persons as being supervisors and Board agents challenged seven persons because they failed to provide sufficient identification.

As the challenged ballots were sufficient in number to determine the outcome of the election, the Regional Director conducted an investigation and issued the attached Report on Challenged Ballots on December 7. The Regional Director's Report recommended that 103 of the challenges be overruled and that those ballots be opened and counted, as his investigation revealed that the employees who cast those ballots were eligible to vote because they worked for the Employer during the

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[2/] Four mobile teams, comprising thirty-seven Board agents, conducted the election at twelve voting sites. In order to preclude the possibility of an employee voting twice, the master list of 995 names was broken down by the ranches at which employees would be working on election day. Each team had only the list of voters at the ranches at which it was assigned to conduct the election. Any voter whose name did not appear on the list at the voting site was challenged by the Board and voted a challenged ballot.

eligibility period. The Regional Director also recommended that 121 of the challenges be sustained as he found that 21 of the voters in that group did not work for the Employer during the eligibility payroll period, and that, since the names of the other 100 challenged voters did not appear on either the Employer's payroll records or those of its labor contractors, they were not eligible to vote. The Regional Director deferred making recommendations as to the remaining 20 challenges, which required further investigation, and recommended they not be resolved unless and until they prove to be outcome-determinative.[3/] The Employer timely filed exceptions to the Regional Director's Report, and a supporting brief.[4/]

Pursuant to the provision of Labor Code section 1146, the Board has delegated its authority in this matter to a three-member panel.

The Board has considered the Regional Director's Report in light of the exceptions and brief, and has decided to adopt the Regional Director's recommendations as modified herein.

Based on the evidence in the Regional Director's

[3/] No exception was taken to the Regional Director's recommendation that 121 of the challenges be sustained, and we therefore sustain those challenges. (See Schedule A, attached.) No exception was taken to the Regional Director's recommendation to defer resolution as to 19 of the 20 challenges and we therefore adopt his recommendation as to those challenged ballots. (See Schedule C, attached.) No exception was taken to the Regional Director's recommendation that the challenge to Ofelia Bustillos and Armando Bustillos be overruled and we therefore adopt his recommendation.

[4/] The Employer did not file any declarations or other documentary evidence in support of its exceptions. (See 8 Cal. Admin. Code section 20363(b).)

Report, the challenge to the ballot of Rigoberto Avina Marquez is hereby overruled. The investigation reveals that Marquez is a member of the bargaining unit except during the pruning season and that during the eligibility period he performed bargaining unit work. Marquez works as a "part-time" or "seasonal" supervisor only when he is employed as a foreman for a labor contractor who is engaged by the Employer during the pruning season. Under these circumstances, the seasonal supervisor rule in Great Western Sugar Company (1962) 137 NLRB 551 [50 LRRM 1186] applies. The challenge to the ballot of Rigoberto Avina Marquez is hereby overruled and the ballot shall be opened and counted.

The challenges to the ballots of the five following-named persons will not be resolved, pending further investigation, unless and until they prove to be outcome-determinative: Gildaro Aguirre, Agustin Alfaro, Ramon Alfaro, Ruben Nabejas, and Misael Ramirez Torres. Contrary to the Regional Director's findings, the eligibility of these five individuals has not been sufficiently established.

The Regional Director is hereby directed to open and count the ballots of the 99 employees whose names appear on Schedule B, attached, and thereafter to prepare and serve upon the parties a revised Tally of Ballots. If the election remains unresolved, the Regional Director shall conduct such further investigation as is necessary to resolve the challenges listed in

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Schedule C, attached, and shall prepare a Supplemental Report on Challenged Ballots setting forth his or her findings and recommendations.

Dated: March 1, 1983

ALFRED H. SONG, Chairman

JORGE CARRILLO, Member

PATRICK H. HENNING, Member

SCHEDULE A

CHALLENGES SUSTAINED

Alfredo Abarca
Emilio Aguilar
Inez Aguilar
Santana Alvarado
Lorenzo Ambriz
Rosalio Gomez Arceo
Agustin Avina
Jesus Quintero Barriga
Salvador Baylon
Primitivo Bello
Antonio Ceja Cardenas
Julio Nunez Cardenas
Loreto Cardenas
Victor Cardenas
Alicia Castaneda
Hector Castillo
Tomas Castillo
Juan Castro
Cerrando Ceja
Antonio Chavez
Serapio Cipriano
Blas Contreras
Jesus Cortez
Saul Cruz
Teresa Ana Cuellar
Arnulfo Cuevas
Francisco De la Paz
Eduardo Duran
Santiago Espinoza
Eduardo Estrella
Jose Estrella
Antonio Figueroa
Alicia Garcia
Javier Garcia
Jesse Garcia
Jesus Garcia
Raul Garcia
Refugio Garcia
Santiago Garcia
Ruben Gaxiola
Jose Gaytan
Daniel Gomez
Francisco Rivera Gonzalez
Javier Gonzalez
Luz Gonzalez
Nicolas Gonzalez
Jose Gudino
Martin Gudino
Sebastian Gudino
Sergio Gomez Guerra
Hipolito Guillen
Arturo Hernandez
Herminio Hernandez
Francisco Herrera
Raul Herrera
Ruben Herrera
Gabriel Ibarra
Epitacio Huerta Juarez
Sara Garcia Juenza
Mario Leon
Librado Lopez
Jesus Losoria
Jose Luna
Everardo Rodriguez Magana
Gerardo Magana
Antonio Ceja Martinez
Evaristo Martinez
Santiago Martinez
Jorge Medina
Baltazar Antonio Mendoza
Juan Manuel Mendoza
Pedro Mendoza
Teodulfo Mendoza
Valerio Mendoza
Alonzo A. Meza
Herlinda Meza
Carlos Morales
Antonio Moreno
Aurelio Barajas Moya
Armando Munoz
Rogelio Navarro
Jesus Vera Nieto
Rogelio Ortega
Adan Ortiz
Florentino Ortiz
Hortencia Osuna
Nicolas Pacheco
Sergio Onofre Padilla
Jose Perez
Salvador Quintero
Cipriano Ramirez
Fulgencio Ramirez
Miguel Ramirez
Patricio Ramirez

Ruben Castro Ramirez
Lauro Reyes
Juan Robles Reynoso
Julia C. Robles
Selso Rocha
Benjamin Rodriguez
Calletano Rodriguez
Hermel Rodriguez
Refugio Samaniego Rojero
Gabriel Romero
Agustin Rubalcava
Teofilo Rubalcava
Maximiliano C. Rubio
Abel Flores Salinas
Samlong Samsanong
Baltazar Sandoval
Dario Sandoval
Jose Silva
Raul Ulteras
Novella Gutierrez Urbano
Guadalupe Valdez
Jaime Valdovinos
Rogelio Valdovinos
Salvador Valdovinos
Jorge Luis Velasquez
Aristeo Vega Zarate
Miguel Zavala

SCHEDULE B

CHALLENGED OVERRULED

Mario Aguayo
Pascual Aleman
Mauricio Almaras
Aaron Arrellano
Miguel Avina
Serafina Baron
Jose B. Barrera
Carmen Barrera
Isabel Buelna
Armando Bustillos
Ofelia Bustillos
Irma Cabrera
Annie Camacho
Maria Camacho
Lupe Carrillo
Rodolfo Casillas
Alicia Castillo
Alfredo Cepeda
Francisco Cepeda
Manuel R. Chaidez
Marcela J. Chaidez
Eduardo Chavez
Ramiro Cholula
Lorenzo Sauceda Contreras
Gonzalo Damian
Eloy Daza
Martin Daza
Gabriel Escoto
Esteban Garcia
Juan Garcia
Justina Garcia
Saturnino Garcia
Jose Luis Gaudara
Crispina Giron
Juan Gonzalez
Luis Geuvara
Dario Hernandez
Dionisio Hernandez
Ignacio Hernandez
Maria Ausuncion Hernandez
Ignacio Horta
Jose Ibarra
Tomas Jacobo
Rafael Jara
Ester Jimenez
Irma Leon
Manuel Leyva
Marco Leyva
Davia Magdaleno Lopez
Patricio Salazar Lopez
Sergio Lopez
Jose Dolores Luevano
Alfredo Magdaleno
Rigoberto Avina Marquez
Carlos Martinez
Marta Martinez
Roberto Ceja Martinez
Daniel Medrano
Efrain Mendez
Juan Mendez
Ignacio Munoz
Pheng Nalay
Jesus Navarro
Javier Padilla
Javier Perez
Yvonne Perez
Pho
Carmen Pimentel
Jesus Pimentel
Jesus R. Pimentel
Martin Pimentel
Samphone Prinyasack
Virginia Quiroz
Janet Ralls
Carlota Ramirez
Celia Ramirez
Geronimo Ramirez
Juan Ramirez
Antonio Leon Ramos
Manuel Ramos
Teresa Rayas
Julio Ramirez Rodriguez
Mario Ruiz
Maria Herrera Samaniego
Margarita Sanchez
Margarito Guzman Sanchez
Martin Sanchez
Roberto Sanchez
Ruben Sandoval Sanchez
Sergio Sanchez
Simon Sanchez
Felipe Santo
Julian Santos
Pablo Santos
Narciso Sigala
Victorino Torres
Filemon Vargas
Jesus Velasquez
Jesus Vera

SCHEDULE C

UNRESOLVED CHALLENGED BALLOTS

Isidro G. Aguiano
Gildaro Aguirre
Agustine Alfaro
Ramon Alfaro
Arturo Leon
Eduvina Martinez
Trinidad Martinez
Filemon Medina
Alejandro Mindiola
Arturo Montes
Jose Montes
Ruben Nabejas
Roberto Parra
Margarito Perez
Elio Presa
Enrique Ramirez
Francisco Romero Ramos
Alfonso Savala Reyes
Sergio Losoria Robles
Jose Robles
Luis Rodriguez
Jose Solis
Misael Ramirez Torres
Fidel Zepeda

CASE SUMMARY

J. Oberti, Inc., J. Oberti Vineyards, J. A. G. S. Vineyards, G. Oberti Sons, Oberti Farms, Ltd., Frank Oberti Ranches, Chowchilla Vineyards, A & D Oberti, Inc., and A. Oberti Ranches

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Case No. 82-RC-11-F

REGIONAL DIRECTOR'S REPORT ON CHALLENGED BALLOTS

The Regional Director conducted an investigation of 244 challenged ballots cast in a representation election among the Employer's agricultural employees. The Regional Director recommended that 101 challenges be overruled because the employees who cast those ballots worked for the Employer during the eligibility period and were therefore eligible to vote. He also recommended that two ballots challenged as alleged supervisors be overruled because his investigation revealed they were not supervisors. The Regional Director recommended that 121 challenges be sustained, because the voters did not work for Employer during the eligibility period. The Regional Director recommended the remaining 20 challenges, which require further investigation, not be resolved unless and until they prove to be outcome-determinative.

BOARD DECISION

The Board adopted the Regional Director's recommendations as to 98 of the 103 challenges overruled and directed him to open and count those ballots. The Board found there was insufficient evidence in the Regional Director's report to overrule the challenges to the ballots of: Gildaro Aguirre, Agustin Alfaro, Ramon Alfaro, Ruben Nabejas and Misael Ramirez Torres. These challenges shall remain unresolved pending further investigation should they become outcome-determinative. The Board ordered that the ballot of Rigoberto Avina Marquez be opened and counted rather than remain unresolved. The Regional Director's investigation reveals that Marquez is a member of the bargaining unit except during the pruning season and performed bargaining unit work during the voter eligibility period. Marquez is a "part time" or "seasonal" supervisor only when he works as a foreman for a labor contractor who is engaged by the Employer during the pruning season. Under these circumstances, the seasonal supervisor rule in Great Western Sugar Company (1962) 137 NLRB 551 [50 LRRM 1186] applies. The Board adopted the Regional Director's recommendation as to the 121 challenges sustained and to the remaining 19 unresolved challenges.

Thus a total of 99 challenges were overruled and ordered to be open and counted; 121 challenges were sustained and 24 challenges remained unresolved.

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This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

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