STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

RECLAIMED ISLAND LAND COMPANY (RILCO), Employer,	Case No. 83-RD-1-F
and	
LEONARD J. MELLO, Petitioner,	9 ALRB No. 71
and	
UNITED FARM WORKERS OF AMERICA, AFL-CIO, Certified Bargaining Representative.	

DECISION ON MOTION TO STRIKE EXCEPTIONS TO REGIONAL DIRECTOR'S DECISION NOT TO ISSUE CHALLENGED BALLOT REPORT

On September 19, 1983[1/] Leonard J. Mello (Petitioner) filed a petition for decertification of the United Farm Workers of America, AFL-CIO (UFW or Union) as the exclusive representative of all the agricultural employees of Reclaimed Island Land Company (RILCO or Employer).

A decertification election was conducted on September 24. The official Tally of Ballots revealed the following results:

///////////////

///////////////

[1/] All dates are 1983, unless otherwise stated.

UFW	26
No Union	27
Unresolved Challenged Ballots	1
Total	54

The following statement appears on the face of the official Tally of Ballots, served upon all parties:

> The number of unresolved challenged ballots is insufficient to affect the outcome of the election, and a majority of the valid ballots counted has been cast for no union.

The UFW timely filed objections to the election, attaching a copy of the Tally. In its objections the Union did not question the determination of the Regional Director that the one challenged ballot was not outcome-determinative. The union's objections have been dismissed by the Executive Secretary, and that dismissal has been affirmed by the Board on Request for Review.

On October 18, 24 days after the decertification election and one day after issuance of the Executive Secretary's order dismissing the objections, the UFW filed a document entitled "Exceptions to Regional Director's Challenged Ballot Report," accompanied by the Declaration of Chris Schneider. Schneider declares that Delano Regional Director Luis Lopez informed him on October 12, 1983 that he did nct intend to issue a challenged ballot report on the single challenged ballot because even if the ballot were cast for the union, the resulting tie vote would bring about decertification of the Union. The UFW seeks to question this determination in its instant "Exceptions."

On October 24, the Employer filed its "Motion to Strike Exceptions as Untimely," and, on November 16, the UFW filed a "Response to the Motion to Strike." Despite having been served with the UFW's exceptions and the Employer's motion, Petitioner Mello has not submitted any written support for or opposition to either position.

Pursuant to the provisions of Labor Code section 1146, the Agricultural Labor Relations Board (ALRB or Board) has delegated its authority in this matter to a three-member panel.

RILCO argues that the Union's "Exceptions" are untimely under the applicable regulations governing filing procedures for objections to elections, 8 Cal. Admin. Code § 20365(b). The UFW responds that it is not objecting to the election or seeking to set it aside, but rather is attempting "to assure that an individual voter who has cast his ballot not be disenfranchised."

The Regional Director's decision not to consider the challenged ballot to be outcome determinative -- and, therefore, not to investigate and issue a challenged ballot report (see 8 Cal. Admin. Code § 20363(a)) -- was communicated to the Union on September 24 by way of issuance of the Tally of Ballots. Nonetheless, the Union's representative who filed the "Exceptions" apparently contends that because he personally was not aware of the Regional Director's decision until his telephone conversation with Luis Lopez on October 12, the October 18 exceptions should be considered timely under the regulation providing for exceptions to the Regional Director's challenged

ballot reports. (8 Cal. Admin. Code § 20363(b).)[2/] The Union does not allege that it relied on any representation by a Board agent or other party that a challenged ballot report would issue.

We find the Union's argument unpersuasive, whether its submission be governed by regulation section 20363(b) or 20365(a). We hereby grant the Employer's motion to strike.

Even if the UFW's "Exceptions" had been timely filed, however, we see no merit in the argument that National Labor Relations Act (NLRA) precedent on the treatment of tie votes in decertification elections is not "applicable" precedent under section 1148 for proceedings under the Agricultural Labor Relations Act (ALRA or Act).

The national board determined in 1949 that the clear language of the NLRA[3/] requires that a collective bargaining representative receive a majority vote in either a certification

---

[2/] Both regulations sections 20363(b) and 20365(a) provide for a five-day filing period.

[3/] Section 9(c)(1)(A)(ii), providing for decertification, states in pertinent part:

> Whenever a petition shall have been filed ... by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees ... assert that the individual or labor organization which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative <u>as defined in section 9(a)</u>...

Section 9(a) provides in pertinent part:

> Representatives designated or selected for the purposes of collective bargaining <u>by the majority</u> of the employees in a unit appropriate for such purposes, shall be the exclusive representative of all the employees in such unit....

or a decertification election. (Best Motor Lines (1949) 82 NLRB 269 [23 LRRM 1557].)

The UFW argues that statutory differences between the ALRA and NLRA make the majority vote requirement in decertification elections inapplicable to elections conducted under the ALRA. The provisions of the ALRA relating to decertification[4/] do differ from the NLRA provisions. An employer can file a petition to test the majority support of a union under the NLRA but not under the ALRA. Different percentages of the employees in the unit, depending on whether or not a contract is in effect, must sign authorization cards to demonstrate the requisite showing of interest for a decertification election under the ALRA, see Cattle Valley Farms (1982) 8 ALRB No. 24,

---

[4/] Section 1156.7, counterpart to NLRA section 9(c)(1)(A)(ii) provides in pertinent part:

> Upon the filing with the board by an employee or group of employees of a petition signed by 30 percent or more of the agricultural employees in a bargaining unit represented, by a certified labor organization which is a party to a valid collective-bargaining agreement, requesting that such labor organization be decertified, the board shall conduct an election by secret ballot pursuant to the applicable provisions of this chapter, and shall certify the results to such labor organization and employer.

Section 1156, the counterpart to NLRA section 9(a) provides in pertinent part:

> Representatives designated or selected by a secret ballot for the purposes of collective bargaining by the majority of the agricultural employees in the bargaining unit shall be the exclusive representatives of all the agricultural employees in such unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment.

whereas the national board requires a 30% showing of interest in certification as well as decertification elections, regardless of whether or not a contract is in effect. (See 8 C.F.R. § 101.18.) Both statutes, however, require a collective bargaining representative to be selected by the majority of the employees in the unit. The ALRA provides that a decertification election be conducted "pursuant to the applicable provisions of this chapter," but nowhere in the Act do we find support for the notion that the no-union or decertification choice must receive a majority vote in order to unseat an incumbent union.

Accordingly, we shall continue to require a certified bargaining representative to obtain a majority vote in a decertification election[5/] in order to maintain its status as the exclusive representative of the employees.

Dated: December 12, 1983

JEROME R. WALDIE, Member

JORGE CARRILLO, Member

PATRICK W. HENNING, Member

[5/] Of course, when the decertification election is set aside, the certified bargaining agent's status is unchanged. (See Nish Noroian Farms (1983) 8 ALRB No. 25.)

CASE SUMMARY

RECLAIMED ISLAND LAND COMPANY (RILCO)

9 ALRB No. 71
Case No. 83-RD-1-F

The Board granted the Employer's motion to strike as untimely a document entitled "Exceptions to Regional Directors Challenged Ballot Report" filed by the Union 24 days after a decertification election. The "Exceptions" purported to challenge the Regional Director's decision not to investigate the single challenged ballot and file a challenged ballot report. Even if the ballot were cast in favor of the Union, it would create only a tie vote. The Regional Director therefore had noted on the face of the official Tally of Ballots, served on all parties to the election, that the challenged ballot was not outcome-determinative. The Board rejected the Union's argument that the five-day time limit should not have begun to run until a telephone call between the Regional Director and a Union representative in which the Regional Director explained that he would not be investigating the challenged ballot or filing a report because the ballot was not considered outcome-determinative.

Despite the Board's ruling to strike the union's "Exceptions" as untimely, it considered in an advisory opinion the Union's argument that NLRA precedent regarding the effect of tie votes in decertification elections was inapplicable. The Board found no statutory or other legal support for the Union's argument that an incumbent union was not required to obtain a majority vote in a decertification election in order to maintain its status as exclusive representative of the employees in the unit.

* * *

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

* * *