Thermal, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

KARAHADIAN & SONS , INC., Employer, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Petitioner.	)	Case No. 77-RC-13-C 5 ALRB No. 19

DECISION ON CHALLENGED BALLOTS

Following a petition for certification filed by the United Farm Workers of America, AFL-CIO (UFW), an election was conducted on June 24, 1977, among the agricultural employees of the Employer, Karahadian & Sons, Inc. The tally of ballots showed the following results:

UFW 121

No Union 169

Challenged Ballots 64

Void Ballots 0

As the challenged ballots were sufficient in number to determine the outcome of the election, the Regional Director conducted an investigation and issued a report, including recommendations as to the resolution of the challenges. Both the Employer and the UFW filed timely exceptions to the report. The Regional Director's Report treats the challenges in four categories: not on eligibility list, not recognized, alleged supervisors, and economic strikers.

Not on Eligibility List Challenges

The Regional Director's Report lists 18 challenged ballots in this category. His recommendations concerning eight of these challenges are based solely on his investigation of company payroll records conducted on July 8, 1977. Those records indicate that Antonio Arellano, Vickie Bernal Avila, Silvia Castilo, and Maria R. Vargas worked within the eligibility period. Accordingly, the Report recommended that challenges to their ballots be overruled. Elena Hernandez, Ester Meza, Hugo F. Reyes, and Paula Chavez Villa did not appear on the records within the eligibility period, and the Regional Director recommended that challenges to their ballots be sustained. The UFW objected generally to the Regional Director's reliance on the Employer's payroll records, but offered no evidence that the records were unreliable in general or that they were in error with respect to particular voters. In the absence of specific exceptions supported by evidence, we will rely on the Regional Director's Report.

The UFW excepted to the recommendation that the challenge to the ballot of Hugo.F.Reyes be sustained. In support of its exception, it submitted declarations from both Mr. Reyes and his mother, with whom he worked, that Mr. Reyes was employed by the Employer on June 10, 1977, the first day of the eligibility period, in John Augustinez' crew. We have previously recognized that family members who work under a single name are eligible to vote if they actually work within the eligibility period. Valdora Produce Company, 3 ALRB No. 8.

As evidence *has* been presented which indicates that Mr. Reyes worked during the eligibility period, we do not resolve this challenge herein. See Schedule C below.

The UFW excepted to the recommendation that the challenge to the ballot of Paula Chavez Villa be sustained. In support of its exception, the UFW submitted Ms. Villa's declaration in which she stated that she worked regularly for the Employer through June 9, and returned to work when her crew was recalled on June 20, but was absent on June 10, because one of her children was ill. On that day, she notified her foreman of the reason for her absence. The UFW argues that Ms. Villa is eligible under the rule in Rod McLellan Company, 3 ALRB No. 6, that employees who are on unpaid sick leave or unpaid holiday during the eligibility period may, under appropriate circumstances, be eligible to vote. We agree. The rationale of McLellan applies equally to an employee who is absent due to illness of a dependent child. Accordingly, we reject the recommendation of the Regional Director and overrule the challenge to Ms. Villa's ballot. See Schedule B.

As the UFW submitted no evidence in support of its general objection to the Regional Director's reliance on the Employer's payroll challenges, we hereby affirm his recommendations concerning the remaining challenges resolved solely on the basis of those records. Accordingly, the challenges to the ballots of Antonio Arellano, Vickie Bernal Avila, Silvia Castilo, and Maria R. Vargas are hereby overruled.

See Schedule B. The challenges to the ballots of Elena Hernandez and Ester Meza are hereby sustained. See Schedule A.

With respect to five of the challenges in the "Not on List" category, the Regional Director concluded that the voters' names appeared in the Employer's payroll records in different form than on their challenged ballots, and accordingly recommended overruling the challenges to their ballots. These voters are Elvia Alvanado (Elvia Alvarado); Lucilia Gallardo (Lusilia Gallardo); Elpidia Rodriguez (Elpidia R. de Meza); Estela S. Valle (Estela Salazar); and Josefina Zamora (Josefina Z. Diaz). Each of these cases involves minor spelling variations, or the use of two last names. We note that the latter practice is common among Spanish-surnamed persons In each of these cases the Regional Director reached his conclusion that the voter and the person appearing in the payroll records were the same person by looking at circumstantial evidence and by comparing names and/or signatures on challenge declarations or on I.D. submitted at the time of the election, with names or signatures in the Employer's records and/or on employee I.D. cards. In the case of Estela S. Valle, the Regional Director also contacted the voter and confirmed her use under different circumstances of both her father's and mother's last name for personal reasons. The Employer excepted to the adequacy of the Regional Director's investigation with respect to each of the above voters, except Josefina Zamora. While contacting the voter and other employees to

resolve this type of challenge is desirable where time permits, the Regional Director acted within his discretion in resolving these challenges on the circumstantial evidence before him in each case. We note that no party excepted to the Regional Director's recommendation as to Josefina Zamora, which was based solely on a comparison of her name and signature on her challenge declaration with her name and signature on the Employer's records and employee identification cards. Accordingly, we affirm the Regional Director's recommendations and hereby overrule the challenges to the ballots of Elvia Alvanado, Lucilia Gallardo, Elpidia Rodriguez, Ester S. Valle, and Josefina Zamora. See Schedule B.

With respect to two voters in this category, Baudelia Medina Gonzales and John A. Moreno, the Regional Director concluded that these persons were employed during the eligibility period under different names, and recommended that the challenges to their ballots be overruled. The Employer excepted to each of these recommendations. The Regional Director based his conclusion as to Ms. Medina on a declaration from her submitted to the Board and a subsequent phone conversation, in which she stated that for personal reasons she worked for the Employer under the name of Aurora Medina. While it would be preferable in such cases to verify the voter's own statements with circumstantial evidence or evidence from other persons who can identify the voter, the Employer's general objection to the Regional Director's investigation does not raise a factual dispute as to the

voter's statements.

With respect to John A. Moreno, the Regional Director based his conclusion on the declaration of Mr. Moreno that he worked under his wife's name, and the declaration of another employee who stated that he worked with Mr. Moreno during the eligibility period, June 10 through June 16. We disagree with the Employer's contention that the fact that no work was actually done after the first day of the eligibility period creates an ambiguity in the employee's declaration which renders it unreliable. The Employer offered no contradictory facts in support of its exception.

For the reasons stated above, we affirm the Regional Director's recommendations as to Baudelina Medina Gonzales and John A. Moreno, and hereby overrule the challenges to their ballots. See Schedule B.

The Regional Director recommended sustaining the challenge to the ballot of Victor Orpilla. Mr. Orpilla could not be located during the challenged ballot investigation, nor does the report recite any other evidence which tends to establish his eligibility to vote. The UFW excepted to the adequacy of the investigation, but offered no specific facts in support of its exception.

We therefore affirm the Regional Director's recommendation and hereby sustain the challenge to Mr. Orpilla's ballot. See Schedule A.

The Regional Director recommended that the challenge to the ballot of Juan Castillo be overruled because Mr.

Castillo's absence from work during the eligibility period was due to illness and therefore he retained his eligibility to vote. See Rod McLellan, 3 ALRB No. 6 (1976). The Regional Director found that Mr. Castillo worked until June 7, 1977, and thereafter missed work, while recuperating from an accident. He returned to work on June 20, along with other members of his crew who were recalled from layoff on that date. Both parties excepted to the Regional Director's finding of eligibility. The UFW offered no contradictory facts but the Employer argued that its payroll records show that Mr. Castillo did not work after June 1. We remand this challenge to the Regional Director to clarify the dates during which this employee was absent, and to determine specifically whether the employee was absent because of illness on those days within the eligibility period on which the rest of his crew was employed. See Schedule C.

The Regional Director recommended that the challenge to the ballot of Maria E. Ferrel not be resolved at this time. Ms. Ferrel's name did not appear on the eligibility list because she was discharged on June 8, two days before the commencement of the eligibility period. Her discharge is the subject of an unfair labor practice charge. Case No. 77-CE-107-C, which was included with other charges in a Complaint issued by the General Counsel on June 9, 1977. The Regional Director recommended that if Ms. Ferrel's discharge is ultimately found to be an unfair labor practice, the challenge to her ballot should be overruled and her vote counted.

The Employer excepts to this recommendation on the ground that even if Ms. Ferrel were illegally discharged, the Regional Director did not find that she would have been employed during the eligibility period but for the discharge. However, the Employer offered no evidence to demonstrate that Ms. Ferrel would not have been employed two days later had she not been discharged on June 8. In the absence *of* such evidence, we affirm the Regional Director's recommendation that this challenge be resolved based upon the resolution of the unfair labor practice charge concerning her discharge. See Schedule C. Not Recognized

The Regional Director recommended that the challenge to the ballot of Martin Aguiar be overruled. Mr. Aquiar was challenged by the Employer's observers because none of them recognized him. He presented a social security card for identification when he appeared to vote. In making his recommendation, the Regional Director relied upon the facts that Mr. Aquiar's signature on his challenge declaration, and the social security card he presented, match the signature and number on his employee identification card. The Regional Director acted well within his discretion in accepting these facts as adequate identification.

The Employer argues that the fact that none of the Employer's observers recognized Mr. Aquiar strongly implies that he was not the person indicated in the identification he presented. However, as the Employer employs a great many workers, the mere fact that observers fail to recognize one voter is

insufficient to cast doubt upon that voter's otherwise valid identification. Accordingly, we hereby overrule this challenge.

See Schedule B.

Alleged Supervisor Challenges

Challenges were made to the ballots of three persons who worked as "Second Bosses" for the Employer. The Regional Director recommended that the challenges to the ballots of Rogelio Fajardo and Beatrice S. Vela be sustained on the ground that they were supervisors and that the challenge to Yenosencio Angel's ballot be overruled on the ground that, whatever his normal position, he worked during the eligibility period as a tractor driver rather than as a second boss. The Employer excepts to the recommendation to sustain the first two challenges and the UFW excepts to the recommendation to overrule the third.

The Regional Director's Report indicates that Yenosencia Angel worked as a second boss until two or three days before the commencement of the eligibility period and then switched to tractor driving. The first day of the eligibility period was the last day of the harvest of Perlette grapes. The crew in which Mr. Angel worked was among the crews laid off until June 20 when picking of Thompson grapes commenced. The Regional Director's Report does not indicate whether Mr. Angel's assumption of tractor driving duties was a temporary change caused by the wind-down and ending of work in the Perlettes, nor does it indicate whether he resumed his supervisorial duties when picking resumed. His performance of non-supervisory work during his crew's layoff period does

not control his status as an employee or supervisor, which must be assessed in the context of those other factors as well.

The Regional Director concluded that Rogelio Fajardo was a supervisor based upon Fajardo's own declaration that he was supervising foreman of his crew. However, this reliance on Fajardo's characterization of his job as supervisory or not is misplaced. While an employee's belief that he possesses supervisory authority may be evidence that he does, supervisory status is to be determined by analyzing the particular authority that the person possesses and not by the individual's legal conclusions about his own status.

The Regional Director concluded that Beatrice Vela was a supervisor based upon the agreement of all parties that Vela's duties as a "second boss" include directing the work of employees. However, responsibility to direct the work of other employees is one of the statutory indicia of supervisory status, only if the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment. Labor Code Sec. 1140.4(j).

In support of its exception to the Regional Director's recommendations with respect to Fajardo and Vela, the Employer submitted the declaration of its foreman describing their duties and responsibilities and characterizing them as being of a routine and clerical nature. This declaration raises a factual dispute as to the supervisory status of Fajardo and Vela.

We remand to the Regional Director to investigate

more fully the job duties of the three alleged supervisors, Yenosencio Angel, Rogelio Fajardo, and Beatrice Vela, including the degree to which their direction of employees involves the independent exercise of authority. See Schedule C. The Regional Director's analysis of the indicia of supervisory or non-supervisory status concerning these individuals should be presented in detail in his supplemental report. In addition, the Regional Director shall investigate the change in Mr. Angel's job status as discussed above.

Economic Striker Challenges

The Regional Director recommended that the challenges to the ballots of forty-two pre-Act economic strikers be sustained on the ground that the statute on its face bars their eligibility because the election was conducted more than 18 months after the effective date of the Act. The UFW filed exceptions to this conclusion and the Employer, anticipating the UFW's exceptions, included arguments in support of the Regional Director's recommendation in its exceptions brief.

In Coachella Imperial Distributors (CID), 5 ALRB No. 18, decided today, we held that the 18-month limitation on the special enfranchisement of pre-Act strikers is appropriately tolled during those months within the 18-month period during which the Board was without funds to conduct elections. See CID, supra, at pp. 11-16. The election herein was conducted in June of 1977, during a month which fell within this period. See CID, supra, at pp. 14-15. Accordingly, we conclude that challenges to the ballots of those economic

strikers eligible to vote pursuant to the criteria set forth in George Lucas & Sons, 3 ALRB No. 5 (1977), and Franzia Brothers Winery, 4 ALRB No. 100 (1978), should be overruled.

The Regional Director is hereby directed to open and count the ballots of the voters named in Schedule B. An amended tally shall thereafter be prepared and served upon the parties. If, upon consideration of the number of challenges sustained herein (Schedule A) and the number of unresolved challenges (Schedule C, including economic strikers), the election remains unresolved, the Regional Director shall conduct such further investigation as is necessary to resolve the challenges listed in Schedule C herein, and shall prepare a Supplemental Challenged Ballot Report setting forth his findings and recommendations, including findings and recommendations as to the individual eligibility of the economic strikers.

DATED: March 16, 1979

GERALD A. BROWN, Chairman

ROBERT B. HUTCHINSON, Member

JOHN P. McCARTHY, Member

HERBERT A. PERRY, Member

RONALD L. RUIZ, Member

SCHEDULE A

Challenges Sustained

1. Elena Hernandez
2. Ester Meza
3. Victor Orpilla

SCHEDULE B

Challenges Overruled

1. Martin Aguiar
2. Elvia Alvanado
3. Antonio Arellano
4. Vickie Bernal Avila
5. Silvia Castillo
6. Lucila Gallardo
7. Baudelia Medina Gonzales
8. John A. Moreno
9. Elpidia Rodriguez
10. Estela S. Valle
11. Maria R. Vargas
12. Paula Chavez Villa
13. Josefina Zamora

SCHEDULE C

Challenges Not Resolved

1. Juan Castillo

2. Maria E. Ferrel (ULP)

3. Hugo F. Reyes

4. Rogelio Fajardo

5. Beatrice S. Vela

6. Yenosencio Angel

7. 42 economic strikers, not named in the Regional Director's Report.

CASE SUMMARY

Karahadian & Sons, Inc.

Case No. 77-RC-C-13-C
5 ALRB No. 19

REGIONAL DIRECTOR'S REPORT

On June 24, 1977, a representation election was conducted among the agricultural employees of the Employer. The tally of ballots showed: UFW-121 votes; No union-169; challenged ballots-64. As the challenged ballots were sufficient in number to determine the outcome of the election, the Regional Director conducted an investigation pursuant to 8 Cal. Admin. Code 20363, and thereafter issued his Report on Challenged Ballots. The challenges fell into four categories: not on eligibility list; not recognized; alleged supervisors; and pre-Act economic strikers. The Regional Director recommended that 14 challenges be overruled, 7 sustained, and that one challenge not be resolved without further investigation. He further recommended that the challenges to the ballots of 42 pre-Act economic strikers be sustained, as the election took place after expiration of the 18-month limit on their eligibility, as set forth in Labor Code Section 1157. Both the Employer and the Petitioner (UFW) filed timely exceptions to the Regional Director's Report.

BOARD DECISION

In its Decision, the Board directed that three challenges be sustained and 13 overruled, and that six challenges not be resolved without further investigation. Referring to its decision in Coachella Imperial Distributors, 5 ALRB No. 18, the Board further held that the 18-month limitation in Section 1157 had been tolled by the hiatus in the Board's first year of operations due to lack of funds, and that the 42 economic strikers were not barred from eligibility by the terms of the statute. However, the Board did not resolve the striker challenges, because the Regional Director's Report had not included findings concerning the eligibility of individual strikers, pursuant to George Lucas & Sons, 3 ALRB No. 5(1977).

The Board directed that the Regional Director open and count the ballots as to which challenges had been overruled, issue an amended tally of ballots and serve it on the parties. In the event that the election is not resolved by the amended tally, the Regional Director was directed to conduct such further investigation as is necessary and prepare a Supplemental Report concerning the 48 challenges not resolved by the Board's Decision.

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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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