

STATE OF CALIFORNIA  
 AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
TEX-CAL LAND MANAGEMENT, INC . ,	)	
	)	
Employer,	)	No. 75-RC-84-F
	)	
and	)	3 ALRB No. 11
	)	
UNITED FARM WORKERS OF AMERICA,	)	PARTIAL DECISION ON
AFL-CIO,	)	CHALLENGED BALLOTS
	)	
Petitioner.	)	
	)	

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Pursuant to our authority under Labor Code Section 1146, the decision in this matter has been delegated to a three-member panel of the Board.

On October 8, 1975 a representation election was conducted among the agricultural employees of Tex-Cal Land Management, Inc. The results of the election were as follows:

For the United Farm Workers of	
America (hereinafter UFW) . . . .	171
For No Labor Organization . . . .	130
Void Ballots . . . . .	2
Challenged Ballots . . . . .	82 <sup>1/</sup>

As there were sufficient challenged ballots to be determinative of the outcome of the election, the Regional Director conducted an investigation pursuant to Section 20365 (e) (1) of the Regulations.<sup>2/</sup> The Regional Director's Report on Challenged Ballots was issued

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<sup>1/</sup> Although the challenge ballot roster included 83 names, the Regional Director found in his investigation that only 82 envelopes contained ballots, one voter having failed to deposit the ballot in the envelope as directed.

<sup>2/</sup> 8 Cal. Admin. Code Section 20365 (e) (1).

on December 5, 1975. The employer filed timely exceptions to the Report. On January 27, 1976, pursuant to written request of the Executive Secretary, served on the parties, the Regional Director issued a letter, also served on the parties, clarifying and supplementing information relative to certain challenged voters. <sup>3/</sup>

Upon consideration of the Regional Director's Report, the supplementary letter, <sup>4/</sup> and the exceptions thereto, we make the following findings of fact and conclusions of law.

Relatives or wives of foremen or supervisors:

The Regional Director recommended that the petitioner's challenges to fifteen voters on the ground that they were the relatives or wives of foremen or supervisors be overruled, in that this is not a recognized basis for challenge under the Regulations. See Section 20350(3); 8 Cal. Admin. Code Section 20350(3). As neither party has excepted to the recommendation we accept it pro forma. <sup>5/</sup>

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<sup>3/</sup> The voters were: Celimar Garcia, Baldonero Parcron, Luiz Maria Zamorra Grajeda, Cristino Bastidas, Estrella Acosta, Neves Alvarez, Miguel Cabrella, Maria Montemayor-Campos, Porfiria Ceja, Jesse Girom, Mario Herrera, Luiz Martinez, Francisco Medina, Esperanza Oropeza, Guillermo Serrato, and Alberto Vela.

<sup>4/</sup> We herein treat the Regional Director's letter, served on all parties, issued in response to a written request by the Executive Secretary for further information, also served on all parties, as a Supplementary Report on Challenged Ballots, Absent exception, the factual conclusions and recommendations contained therein shall be accepted by the Board as final. Regulation Section 20365 ( f ), repealed and re-enacted as Section 20363(b) of the new Regulations, 8 Cal. Admin. Code Section 20363(b) .

<sup>5/</sup> 8 Cal. Admin. Code Section 20365 ( f ) .

We therefore overrule the challenges and order that the ballots of the following individuals be opened and counted:

- |       |                     |        |                       |
|-------|---------------------|--------|-----------------------|
| ( 1 ) | Berta Medina        | ( 9 )  | Jose Medina, Jr.      |
| ( 2 ) | Emelia Galindo      | ( 10 ) | Urbano Ibarro Galindo |
| ( 3 ) | Filomena De La Cruz | ( 11 ) | Norma Galindo         |
| ( 4 ) | Gabriela Secaya     | ( 12 ) | Emegidio Galindo      |
| ( 5 ) | Maria M. Rodriguez  | ( 13 ) | Constantino Galindo   |
| ( 6 ) | Elia M. Perez       | ( 14 ) | Angie Dominguez       |
| ( 7 ) | Erasmus Montemayor  | ( 15 ) | Theresa Gonzales      |
| ( 8 ) | Rodolfo M. Medina   |        |                       |

No Identification;

Fourteen voters were challenged on the ground that they could not produce identification at the time of the voting. In his subsequent investigation the Regional Director determined that the identity of the following voters could not be determined, and he therefore recommended that the challenges to their ballots be sustained :

- |       |                   |       |                  |
|-------|-------------------|-------|------------------|
| ( 1 ) | Claudio Amado     | ( 5 ) | Tommy Patoc      |
| ( 2 ) | Frances Cervantes | ( 6 ) | Paula Reyes      |
| ( 3 ) | Arthur Feliscian  | ( 7 ) | Felice Bernal    |
| ( 4 ) | Mary Mendez       | ( 8 ) | Benjamin Acevedo |

As neither party has excepted to this recommendation, we accept it pro forma and sustain the challenges to these ballots.

The Regional Director recommended overruling the challenges to six ballots on the ground that their identity had been independently determined by his investigation. The employer filed exceptions to each recommendation.

Margarita Aguirre

The Regional Director found that this voter had been recognized by the employer's observers, and therefore recommended overruling the challenge to her ballot. The employer excepted to this finding on the ground that identification by observers for only one party is insufficient; observer identification, it argues, is sufficient only if by observers representing a majority of the parties to an election. We find no basis in our decision, the Act or the Regulations to support the employer's view <sup>6/</sup> and we accept the Regional Director's findings regarding this voter. Consequently, we accept the Regional Director's recommendation, overrule the challenge, and order that the ballot of Margarita Aguirre be opened and counted.

Antonio Diaz

The Regional Director recommended overruling the challenge to this voter on the ground that Diaz was recognized by the UFW observer and correctly recited the social security number of the Antonio Diaz listed on the payroll. The employer again excepts on the ground that recognition by only one observer is inadequate, and additionally, on the basis that the "recitation" of a social security number, rather than the presentation of the card itself, is insufficiently probative of the identity of the voter.

As to the first of these arguments, we reject it as in the case of voter Aguirre, supra. The second exception is also without merit. Section 20350 ( c ) of the Regulations <sup>7/</sup> confers discretion upon Board agents to determine the adequacy of voter identification

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<sup>6/</sup> See Toste Farms, Inc., 1 ALRB No. 16 (1975).

<sup>7/</sup> 8 Cal. Admin. Code Section 20350 ( c ) .

evidence. We find no abuse of this discretion on the record here. We therefore accept the Regional Director's recommendation, overrule the challenge to the ballot of Antonio Diaz and order that it be opened and counted.

Celimar Chapa Garcia

The Regional Director initially recommended that the challenge to this voter be overruled in that his investigation revealed she had been recognized by an observer. The employer excepted, relying on its view that recognition by one observer was insufficient identification, and additionally, by alleging that the name of the voter did not appear on the eligibility list. Pursuant to Board direction by letter dated January 27, 1976, and served on all parties,<sup>8/</sup> the Regional Director reported further information concerning the voter to the Board. His further finding was that the voter's proper name was as set forth above, not Celinar as had appeared in the earlier report, and that the voter's name appeared on the applicable payroll.

As the employer did not except to the Regional Director's supplemental finding as to this voter's appearance on the applicable payroll, we accept that finding pro forma. Having previously rejected the employer's argument concerning the adequacy of observer identification, we accept the Regional Director's recommendation, overrule the challenge to the ballot of Celimar Chapa Garcia, and order that it be opened and counted.

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<sup>8/</sup> See footnote 4, supra.

Ismael Jamie

The Regional Director recommended that the challenge to this voter's ballot be overruled because the name appeared on the eligibility list and he produced a check stub from a prior employer as identification. The employer excepted to this recommendation, alleging that a check stub is not proper identification since "...the individual presenting this stub could have come into possession of the stub in any one of a number of ways" •

As we have previously noted, Section 20350(c) of the Regulations accords the Board agent discretion to determine the adequacy of the identification provided by potential voters. The employer's exception, resting upon speculation concerning how the voter might have acquired the proffered identification, does not indicate an abuse of this discretion. Nor does it constitute a specific assertion substantiated by evidence, raising a material factual dispute which would warrant a further investigation or hearing. Sam Andrews' Sons, 2 ALRB No. 28 (1976). Therefore, we accept the Regional Director's recommendation, overrule the challenge, and order that the ballot of Ismael Jamie be opened and counted.

Baldonero Parcron

The Regional Director recommended that the challenge to this voter's ballot be overruled in that the voter's name appeared on the eligibility list and "...his signature compared with that on company payroll records". The employer's exception alleges that at the time of the signature examination, employer representatives disputed the Board agent's opinion that the signature of the challenged

voter matched that on the payroll records, and further, that neither the eligibility list nor the employer's payroll records list an individual by the name of Baldonero Parcron.

Pursuant to Board direction, by letter dated January 27, 1976, and served on all parties, the Regional Director made further investigation and reported that the voter's name did indeed appear on the eligibility list, but that it was misspelled as "Paraon Baldomero". As no exception was filed we accept this finding pro forma.

The employer's remaining basis of exception, concerning the handwriting comparison, does not provide evidence by avenue of exception sufficient to raise a material dispute of fact. Sam Andrews' Sons, supra. We therefore accept the Regional Director's recommendation, overrule the challenge, and order that the ballot of Baldonero Parcron be opened and counted.

Raul Valdivia

The employer excepted to the Regional Director's recommendation that the challenge to this voter be overruled, on the ground that recognition by one observer is insufficient. Our rejection of this argument, supra, is dispositive of this challenge, and we therefore accept the Regional Director's recommendation, overrule the challenge, and order that the ballot of Raul Valdivia be opened and counted.

#### Not on Eligibility List

There were a total of thirty-eight (38) voters challenged as "not on the eligibility list". Within this group, there are various subclasses which will be treated below.

The Regional Director determined that the names of four voters, originally challenged as not on the eligibility list, were located on the list by Board agents in their post-election investi-

gation. He therefore recommended that the challenges to these ballots be overruled. As neither party has excepted to the recommendation, we accept it pro forma and order that the ballots of these voters be opened and counted. <sup>9/</sup>

The employer took exception to the Regional Director's recommendation overruling the challenges to two ballots. As to the first of these, Luiz Maria Zamorra Grajeda, the Regional Director originally reported that the voter appealed on the employer's payroll with the last name Zamorra. In his supplementary letter of January 27, 1976, served on all parties, and to which the employer took no exception, the Regional Director reported that the voter had used her immigration card for identification at the election site, and that that document recited her name as set forth above. The Regional Director having determined the identity of this voter, and the employer filing no further exception, we accept the recommendation, overrule the challenge, and order that the ballot of Luiz Maria Zamorra Grajeda be opened and counted.

The Regional Director initially recommended that the challenge to the ballot of Cristino Bastidas be overruled on the ground that his investigation revealed that the voter was on the weekly payroll prior to the statutory payroll period and the payroll subsequent to it. The Regional Director concluded that the employee was on vacation and was therefore eligible. The employer excepted, arguing that the Regional Director set forth no evidence for his conclusion that the voter was on vacation, expressed doubt that an agricultural

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<sup>9/</sup> The votes are: Pedro Lopez Herrera, Leopoldo Martinez, Pablo G. Pristo, Guadalupe Maldonado Montes.

employee would take a vacation during the peak employment season, and noted that there is nothing in the Act or the Regulations which would allow an employee not working during the statutory payroll period to be eligible to vote.

In his supplemental letter of January 27, 1976 the Regional Director reported that the voter, with the knowledge of the employer's payroll clerk, had taken an unpaid one-week vacation during the statutory payroll period.

Based upon these facts we find this voter to be within the scope of the rule enunciated in Rod McLellan Co., 3 ALRB No. 6 at 3-4 (1977) and eligible to vote. The record here reveals that Bastidas was a current employee of the employer during the period in which the petition was filed: he worked the week before and the week after the statutory payroll period. The fact that he was on unpaid vacation with the employer's knowledge and apparent acquiescence during the payroll period indicates that both the company and the employee viewed the absence as a brief interruption of an otherwise current employment relationship. We therefore order that the challenge to the ballot of Cristino Bastidas be overruled and that it be opened and counted.

#### Challenges Sustained

In his report the Regional Director recommended sustaining challenges to the ballots of twenty-four voters on various grounds: fired, allegedly for union activities, but prior to effective date

of the Act; <sup>10/</sup> laid off before pertinent payroll; <sup>11/</sup> fired prior to election, allegedly for union activities, but no unfair labor practice charges filed; <sup>12/</sup> voluntary quit to return to school, prior to applicable payroll period; <sup>13/</sup> commenced working after the applicable payroll period; <sup>14/</sup> economic striker who failed to appear to substantiate status in post-election investigation. <sup>15/</sup>

No party having excepted to these recommendations, we accept them pro forma and sustain the challenges to these ballots.

The Regional Director initially found, as to a further group of twelve employees, challenged as being not on the eligibility list, that they had declared they were employed by a farm labor contractor working on the employer's property during the applicable payroll period. He recommended that the challenges be overruled solely on the ground that the employer had failed to produce evidence in support of the challenges. As the employer pointed out in its exceptions, however, these challenges were made by the Board, not the employer.

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<sup>10/</sup> Eliza F. Natera

<sup>11/</sup> Jesus Rodriguez

<sup>12/</sup> Isabel Baajas, Jose G. Frausto, Francisco Lara, Francisca C. Degarcia, Angelita F, Garcia, Zenaida B. Lopez, Esther G. Mendoza.

The Regional Director included the voter Marina Contreras Marquez in this group. However, we take note that the official record of these consolidated unfair labor practice cases now pending with this Board reflect that this voter did in fact initiate a charge of discriminatory layoff under the Act against this employer. We do not resolve the challenge to this voter as the case is still pending and the ballot has not been shown to ,be outcome determinative.

<sup>13/</sup> Modesto Vasquez

<sup>14/</sup> Isidro Mascarro Reys, Exiguo Baceros, Ernesto Beltran, Alfredo Eustaquio, Espitosion S. Goday, Gloria N. C. Rodriguez, Armando Rodriguez, Armando Barceros, Abel S. Beltran, Guadalupe Canter, Manuel Fernandez, Jose Luiz Gutierrez, Maria Onelia Canto Rodriguez.

<sup>15/</sup> Raquel Aguilar

In his supplementary report of January 27, 1976, the Regional Director determined that of the twelve voters, only Guillermo Serrato and Alberto Vela were on the labor contractor's list of employees for the applicable payroll period. No exception having been taken, we therefore overrule the challenges to the ballots of these two individuals and order them opened and counted, and sustain the challenges to the remaining ten. <sup>16/</sup>

The Regional Director found that two voters, <sup>17/</sup> challenged as supervisors, were not so within the meaning of Section 1140.4 ( f ) of the Act and Section 20350(1) of the Regulations. He recommended that the challenges to these voters be overruled. Neither party having excepted, we adopt the Regional Director's finding pro forma, overrule the challenge to the ballots of these voters and order that they be opened and counted.

### Conclusion

The Regional Director is hereby ordered to open and count the ballots for which challenges have been overruled herein, set forth in Sechedule A. We order that the ballots to which challenges have been sustained, set forth in Schedule B, not be opened. The Regional Director shall thereafter issue and serve a new tally upon

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<sup>16/</sup> The ten voters are: Estrella Acosta, Neves Alvarez, Miguel Cabrella, Maria G. Montemayor-Campos, Porfiria Ceja, Jesse Girom, Mario Martinez Herrera, Luiz Marquez Martinez, Francisco R. Medina, and Esperanza Oropeza.

<sup>17/</sup> Andy De La Cruz; Julito Guieb.

the parties. If the challenged ballots remaining after the above count (Schedule C) are not determinative, the Executive Secretary shall certify the election. If the ballots of those listed in Schedule C are determinative, the Regional Director shall notify the Executive Secretary and the parties to that effect, for further action by this Board.

Dated: February 10, 1977

Gerald A. Brown, Chairman

Ronald L. Ruiz, Member

MEMBER JOHNSEN, Dissenting in Part:

I disagree with the finding of the majority that the ballot of Cristino Bastidas should be counted. The Regional Director overruled the challenge to this ballot on the grounds that the reason this person's name did not appear on the appropriate payroll list was because he was absent on an unpaid vacation. The majority agreed on the basis of their reasoning in Rod McLellan Co., 3 ALRB No. 6 (1977).

For the reasons expressed in my dissent in Rod McLellan Co., supra, I disagree and would sustain the challenge.

Dated: February 10, 1977

Richard Johnsen, Jr., Member

SCHEDULE A

Challenges Overruled:

- |                            |      |                            |
|----------------------------|------|----------------------------|
| ( 1 ) Berta Medina         | (16) | Margarita Aguirre          |
| ( 2 ) Emelia Galindo       | (17) | Antonio Diaz               |
| ( 3 ) Filomena De La Cruz  | (18) | Celimar Chapa Garcia       |
| ( 4 ) Gabriela Secaya      | (19) | Ismael Jamie               |
| ( 5 ) Maria M. Rodriguez   | (20) | Baldonero Parcron          |
| ( 6 ) Elia M. Perez        | (21) | Raul Valdivia              |
| ( 7 ) Erasmo Montemayor    | (22) | Pedro Lopez Herrera        |
| ( 8 ) Rodolfo M. Medina    | (23) | Guadalupe Maldonado Montes |
| ( 9 ) Jose Medina, Jr.     | (24) | Guillermo Serrato          |
| (10) Urbano Ibarro Galindo | (25) | Alberto Vela               |
| (11) Norma Galindo         | (26) | Andy De La Cruz            |
| (12) Emegidio Galindo      | (27) | Julito Guieb               |
| (13) Constantino Galindo   | (28) | Luiz Maria Zamorra Grajeda |
| (14) Angie Dominguez       | (29) | Leopoldo Martinez          |
| (15) Theresa Gonzales      | (30) | Pablo Y. Pristo            |
|                            | (31) | Cristino Bastidas          |

SCHEDULE B

Challenges Sustained:

- |                            |                                   |
|----------------------------|-----------------------------------|
| ( 1 ) Claudio Amado        | (22) Ernesto Beltran              |
| ( 2 ) Frances Cervantes    | (23) Alfredo Eustaquio            |
| ( 3 ) Arthur Feliscian     | (24) Espitosion S. Goday          |
| ( 4 ) Mary Mendez          | (25) Gloria N. C. Rodriguez       |
| ( 5 ) Tommy Patoc          | (26) Armando Rodriguez            |
| ( 6 ) Paula Reyes          | (27) Armando Barceros             |
| ( 7 ) Felice Bernal        | (28) Abel S. Beltran              |
| ( 8 ) Benjamin Acevedo     | (29) Guadalupe Canter             |
| ( 9 ) Raquel Aguilar       | (30) Manuel Fernandez             |
| (10) Eliza F. Natera       | (31) Jose Luis Gutierrez          |
| (11) Jesus Rodriguez       | (32) Maria Onelia Canto Rodriguez |
| (12) Isabel Barajas        | (33) Estrella Acosta              |
| (13) Jose G. Frausto       | (34) Neves Alvarez                |
| (14) Francisco Lara        | (35) Miguel Cabrella              |
| (15) Angelita F. Garcia    | (36) Maria G. Montemayor-Campos   |
| (16) Francisca C. Degarcia | (37) Porfiria Ceja                |
| (17) Zenaida B. Lopez      | (38) Jesse Girom                  |
| (18) Esther G. Mendoza     | (39) Mario Martinez Herrera       |
| (19) Modesto Vasquez       | (40) Luiz Marquez Martinez        |
| (20) Isidro Mascarro Reyes | (41) Francisco R. Medina          |
| (21) Exiguo Baceros        | (42) Esperanza Oropeza            |

SCHEDULE C

Challenges Not Determined:

( 1 ) Aurora Barajas

( 2 ) Gloria Barajas

( 3 ) Amparo Garcia

( 4 ) Rosalio Pelayo

( 5 ) Elvira Banuelos

( 6 ) Ofelia Diaz

( 7 ) Ruben Mendoza

( 8 ) Linda Perez

( 9 ) Marina Contreras Marquez