

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

JULIUS GOLDMAN'S EGG CITY,)	
Employer,)	No. 75-RC-21-M
and)	3 ALRB No. 76
)	
WESTERN CONFERENCE OF TEAMSTERS,)	
Locals 186 and 865,)	
Joint Petitioners,)	
)	
and)	
)	
UNITED FARM WORKERS OF AMERICA,)	
AFL-CIO,)	
Intervenor.)	

DECISION ON CHALLENGED BALLOTS

On September 9, 1975, an election was conducted among the employees of the employer. The tally of ballots served upon the parties on September 11, 1975 showed the following results:

Teamsters	189
UFW	114
No Union	1
Void	0
Challenged Ballots	203

As the challenged ballots were outcome-determinative, the regional director conducted an investigation pursuant to 8 Cal. Admin. Code §20363 (a) (1976) and issued and served his challenged ballot report on June 29, 1977 and a supplemental challenged ballot report on July 7, 1977. All parties filed exceptions to the reports.

Miscellaneous Challenges Overruled - No Exceptions

The regional director recommended that challenges to the ballots of the twenty-five persons listed in schedule A, attached, be overruled. No exceptions having been taken, we adopt his recommendation, and order that these ballots be opened and counted.

Miscellaneous Challenges Sustained

The regional director recommended sustaining the challenges to the votes of the first seven persons listed in schedule B and no party has excepted thereto. We therefore adopt the regional director's recommendation and sustain those seven challenges. We also sustain the challenge to the vote of the eighth person listed, Ramon Mendoza, challenged for lack of identification. The report reveals that Mendoza could not be located in the post-election investigation, so his identity could not be verified. The Economic Striker Challenges

The regional director found, and all parties agree, that the strike at issue began on April 10, 1975. The vast majority of the strikers were on the payroll immediately preceding the strike. The election was conducted on September 9, 1975. It is clear, and we find, that the 18-month election and 36-month performance of services requirements of §1157 of the Act are therefore satisfied.

A total of 167 persons voted as economic strikers. During the post-election investigation, the regional director was able to locate and obtain declarations from 140 of these voters, concerning whom he found in his report that: they were on the company payroll on or about April 10, 1975 and went on strike on that date; they have not returned to work at the company; they have neither

reapplied for work at the company, nor asked to be placed on a list for future employment; in the event the strike should end, they would return to work for the company.

The employer disputes the eligibility of these voters on two general grounds, both of them legal, rather than factual, in nature. The employer contends that the strike was not economic within the meaning of §1157 of the Act and therefore that none of these voters was eligible to vote pursuant to the provisions of that section. Secondly, the employer maintains that the strike was undertaken in violation of a valid no-strike clause and that the strikers were therefore not engaged in protected concerted activity and could properly be replaced by the company, thereby ending their employee status and voting eligibility. Upon careful consideration of these arguments we have determined that they do not invalidate these votes, on general grounds, and we shall order that, with some exceptions, all of -these ballots be opened and counted. The legal issues are discussed below.

The voting eligibility of these employees derives from the second paragraph of §1157 of the Act, which states:

In the case of elections conducted within 18 months of the effective date of this part which involve labor disputes which commenced prior to such effective date, the board shall have the jurisdiction to adopt fair, equitable, and appropriate eligibility rules, which shall effectuate the policies of this part, with respect to the eligibility of economic strikers who were paid for work performed or for paid vacation during the payroll period immediately preceding the expiration of a collective-bargaining agreement or the commencement of a strike; provided, however, that in no event shall the board afford eligibility to any such striker who has not performed any services for the employer during the 36-month period immediately preceding the effective date of this part.

At the time of the enactment of the ALRA there were two types of lawful strikes recognized by the NLRB and other federal authority as having a bearing on voter eligibility: the economic strike and the unfair labor practice strike. The NLRB had long held that an initial finding that a strike was caused by unfair labor practices could be made only in unfair labor practice proceedings. Times Square Stores Corp., 79 NLRB 361, 364-65; 22 LRRM 1373 (1948). In representation cases, where the eligibility of voters turned on the character of the strike, in the absence of a prior board finding that the strike was an unfair labor practice strike, it was presumed to be economic in nature. Ibid; See also Bright Foods, Inc., 126 NLRB 553, 45 LRRM 1343 (1960), wherein alleged "recognitional strikers" were presumed to be economic strikers. One respected authority has defined an economic strike as ". . . one that is neither caused nor prolonged by an unfair labor practice on the part of the employer." Morris, The Developing Labor Law, p. 524, BNA (1971).

Crediting the Legislature with knowledge of these well-established principles, the conclusion is inescapable that for the purpose of determining voting eligibility under the second paragraph of §1157 all pre-Act strikes are conclusively presumed to be economic strikes. The appearance of the term "economic strikers" in §1157 is an unequivocal expression of this presumption. Logic also compels this conclusion because by definition there were no agricultural unfair labor practices prior to August 28, 1975, and therefore no agricultural unfair labor practice strikers. For these reasons we dismiss this exception.

We also reject the employer's claim that the eligibility of these voters is foreclosed by their alleged violation of the no-strike clause in the contract in effect between the company and the Western Conference of Teamsters, Local 186, in April, 1975. We find, on the contrary, that the eligibility of these economic strikers derives solely from the terms of Section 1157 of the Act. As set forth above, the applicable statutory conditions for establishing voting eligibility herein have been met. The Board is not empowered to expand upon these statutory criteria to create additional restrictions upon the voting eligibility of pre-Act economic strikers. Accordingly, this exception is also dismissed.

The employer has taken specific exception to the eligibility of ten of the economic strikers. In addition, it has excepted to the recommendation that the challenge to the ballot of Ben Valeric, an alleged supervisor, be sustained. These exceptions raise material issues of fact. In the event that these eleven challenges prove to be outcome-determinative, the regional director shall conduct such further investigation of these challenges, listed in schedule D, as may be required.

The first thirteen persons in schedule D were listed on the pre-strike payroll and appeared to cast ballots as strikers, but were not located during the post-election investigation. Therefore we do not resolve the challenges to their ballots at this time pursuant to our decision in D'Arrigo Bros., Reedley District, 3 ALRB No. 34 (1977) concerning alleged strikers on the pre-strike payroll who failed to appear for post-election investigation. Although no declarations have as yet been obtained from these thirteen voters, we do not consider that a sufficient basis to

rule upon the ballots of these employees. Action on these ballots, together with the ballots of the five other voters listed on schedule D who are in the same category, will be deferred for further investigation should that become necessary.

The regional director is hereby ordered to open and count the ballots of the voters named in schedules A and C attached hereto. An amended tally of ballots shall thereafter be issued and served upon all parties. If, upon consideration of the number of challenges sustained herein, (schedule B), the outcome of the election remains unresolved, the regional director shall undertake such further investigation as may be necessary to resolve the challenges to the ballots of the voters listed in schedule D.

DATED: September 27, 1977

HERBERT A. PERRY, Member

RONALD L. RUIZ, Member

Gerald A. Brown, Chairman, concurring:

I concur in the results.

Gerald A. BROWN, Chairman

SCHEDULE A

CHALLENGES OVERRULED - NO EXCEPTIONS

- | | |
|-----------------------|----------------------|
| 1. Natividad Avila | 18. Maria Vasquez |
| 2. Rita V. Corral | 19. Saturino Yniquez |
| 3. Andres Diaz | 20. Celia Godinez |
| 4. Stanely R. Gillie | 21. Maria Godinez |
| 5. Castulo L. Limon | 22. Khiet Ngoc Bui |
| 6. Emilia Magdaleno | 23. Thuy Hong Nguyen |
| 7. Paula V. Marquez | 24. Du thuoc Tran |
| 8. Pascual Pacheco | 25. Jose Diaz |
| 9. Alberto Diaz | |
| 10. Cecilia Cuellar | |
| 11. Bill Edwards | |
| 12. Pablo Gonzales | |
| 13. Pedro Hernandez | |
| 14. Jaime Jimenez | |
| 15. Manual V. Lopez | |
| 16. San Juanita Perez | |
| 17. Melvin Stevens | |

SCHEDULE B
CHALLENGES SUSTAINED

1. Floyd W. Caldwell
2. Miguel Pimental
3. Antonio T. Rodriguez
4. Salvador Saucenito
5. Benjamin Verduzco
6. Manual Zavala
7. Edward Eurlilio Luvano
8. Ramon Mendoza

SCHEDULE C

ECONOMIC STRIKER CHALLENGES

OVERRULED PER OPINION

- | | |
|-------------------------------|------------------------------|
| 1. Javier G. Alcaraz | 26. Pedro D. Contreras |
| 2. Luz R. Alcaraz | 27. Theresa Davalos |
| 3. Agustin R. Alfaro | 28. Ignacio L. Duarte |
| 4. Florencio Rodriguez Alfaro | 29. Rosario P. Evardado |
| 5. Manual M. Alvarez | 30. Jesus Vaca Farios |
| 6. Ramiro Alvarez | 31. Manuel Flores |
| 7. Lusila Amezcua | 32. Alicia G. De Galvan |
| 8. Maria Rodriguez Anaya | 33. Joaquin M. Garcia |
| 9. Heliodoro De Andra | 34. Sylvestre C. Garcia |
| 10. Miguel Arambola | 35. Sylvestre S. Garcia |
| 11. Joe Arambula | 36. Reynoldo (Perez) Garnica |
| 12. Agustin Morales Avina | 37. Jesus R. Garza |
| 13. Jose M. Baldez | 38. Bartolo G. Gomez |
| 14. Renee Barrera | 39. Ramon D. Gonzales |
| 15. Herminia G. Becerra | 40. Goerge A. Gutierrez |
| 16. J. Guadalupe Becerra | 41. Luis Garcia Gutierrez |
| 17. Velia Becerra G. | 42. Raul J. Gutierrez |
| 18. Manuel M. Bravo | 43. Serafin Gutierrez A. |
| 19. Ruben C. Bueno | 44. Maria Linda Hernandez |
| 20. Manuel R. Canes | 45. Jose Refugio Jimenez |
| 21. Rosa Eva Cano | 46. Antonio Ledesma |
| 22. Miguel Ramirez Carrillo | 47. Carlos Lomeli |
| 23. Francisco T. Ceja | 48. Angelica P. Lugo |
| 24. Alfredo Cervantez | 49. Rodolfo G. Lugo |
| 25. Javier P. Cervantez | 50. Rosalia Lugo |

Schedule C continued-----

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|---------------------------------|-------------------------------------|
| 51. Celia Madrigal | 76.76. Ruben Lopez Ortega |
| 52. Juvenar Arriola Magdaleno | 77.77. Rosa Padilla |
| 53. Flavio Munoz Marquez | 78.78. Alberto C. Garcia Pantoja |
| 54. Benjamin Marquez Marquez | 79.79. Sergio Chavez Perez |
| 55. Jose Carlos Marquez Marquez | 80.80. Ramon G. Prado |
| 56. Carlos Navarrete Martines | 81.81. Gilberto Ramirez |
| 57. Ismael Marquez | 82.82. Javier V. Ramirez |
| 58. Francisco T. Martinez | 83.83. Rosa Ramirez |
| 59. Ixnelda Martinez | 84.84. Alfonso Ramos |
| 60. Adan M. Medina | 85.85. Regimo V. Reyes |
| 61. Daniel Rodriguez Medina | 86.86. Antonio Tovar Rico |
| 62. Justina G. Melendez | 87.87. Ramon G. Rios |
| 63. Ramon Salgado Melgoza | 88.88. Alberto Vargas Rodriguez |
| 64. Fernando M. Meza | 89.89. Alicia Rodriguez |
| 65. Rosalia Meza | 90.90. Aurelio Villalobos Rodriguez |
| 66. Abel Morales | 91.91. Francisco M. Rodriguez |
| 67. Arnulfo Morales | 92.92. Humberto Mendoza Rodriguez |
| 68. Catalina R. Morales | 93.93. Jesus Villa Rodriguez |
| 69. Consuelo G. Morales | 94.94. Jose L. Rodriguez |
| 70. Gabriel V. Morales | 95.95. Jose Mancha Rodriguez |
| 71. Jesus Sanchez Morales | 96.96. Josephina Rodriguez |
| 72. Graciela Rodriguez Amezcua | 97.97. Maria Jesus Rodriguez |
| 73. Maria L. Morales | 98.98. MArtha Meza Rodriguez |
| 74. Maria C. De Morales | 99.99. Miguel L. Rodriguez |
| 75. Rodolfo Morales | 100.100. Rafael Jasso Rodriguez |

Schedule C continued -----

101. Sylvia Zaragoza Rodriguez
102. Maria Eugenia Rosalez
103. Maria V. Ruiz
104. Mercedes C. De Ruiz
105. Flora Rocha De Salgado
106. Maria G. Salgado
107. Miguel Salgado
108. Samuel M. Salgado
109. Elio Salinas
110. Baudelio Sandoval
111. Vicente Sumaran
112. Octavio M. Tamayo
113. Ricardo R. Tamayo
114. Susano Rodriguez Tamayo
115. Elias Tellez
116. Jose Luis Torres
117. Jesus J. Valenzuela
118. Maria Melda Vasquez
119. Roberto Vasquez
120. Gonzalo V. Velasquez
121. Fortunato Jerez Vera
122. Panfilo Vergara
123. Rafael P. Verduzco
124. Ruben E. Victoria
125. Maria Trinidad Zaragoza De Villa
126. Ramon Rivera Villa
127. Ignacio Lomeli Ybarra
128. Cenovio Jasso
129. Gloria Alfaro Ceja
130. Ramon Arambula Calata
131. Jose L. Baca Ceja
132. Alfredo Canul - Chan
133. Benito Ramos Meza
134. Ramiro T. Meza
135. Carolina Rodriguez
136. Trinidad Ruiz G.
137. Jose Cervantes R.
138. Salvador M. Ramirez
139. Miguel R. Villa
140. Ruben Cervantes Rodriguez

SCHEDULE D

CHALLENGES NOT RESOLVED

- | | |
|---------------------------------|-----------------------------|
| 1. Nicholas Figueroa (Gonzalez) | 17. Maria Concepcion Flores |
| 2. Eпитacio C. Lira | 18. Ricardo R. (M) Meza |
| 3. Gabriel M. Morales | 19. Bernardo Lugo Anguiano |
| 4. Paul T. Navarette | 20. Genaro Ramirez R. |
| 5. Carlos V. Olivares | 21. Jesus Caranza |
| 6. Arturo Ambriz Rodriguez | 22. Mario Saucedo |
| 7. Ignacio Ramirez Rodriguez | 23. Miguel Ceja |
| 8. Juan Guzman Santillan | 24. Javier Ceja B. |
| 9. Heli Sierra | 25. Jesus M. .Morales |
| 10. Jose M. Zalsido (salsido) | 26. Maria A. Morales |
| 11. Carlos Zamora | 27. Jose H. Ventura |
| 12. Jose C. Murillo | 28. Jim Aguilar Amezcua |
| 13. Daniel Ortiz | 29. Eriverto Sanchez |
| | 30. Guillermo Hernandez |
| 14. Maria Concepcion De Vaca | |
| 15. Ben Valeric | |
| 16. Carlos Cervantes | |