

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

VALDORA PRODUCE CO. ,)
)
Employer)
)
and)
)
UNITED FARM WORKERS) 75-RC-67-R
OF AMERICA, AFL-CIO)
)
Petitioner) 3 ALRB No. 8
)
and)
)
WESTERN CONFERENCE OF) Decision on Challenged Ballots
TEAMSTERS) and Objections
)
Intervenor)
)

On December 17, 1975, an election was conducted among the agricultural employees of the employer, Valdora Produce Company.

The results of the election were as follows:

Votes cast for the United Farm Workers of America, AFL-CIO (UFW).	64
Votes cast for the Western Conference of Teamsters (WCT)	35
Votes cast for No Labor Organization	1
Challenged Ballots	66
Void Ballots	1

Because the number of challenged ballots is sufficient to affect the outcome of the election, the regional director of the Agricultural Labor Relations Board (Board), Riverside Office, conducted an investigation of the challenges and issued a Report

on Challenged Ballots on February 5, 1976, pursuant to 8 Cal. Admin. Code Section 20365 (e) (1). The regional director recommended sustaining the challenges to 20 ballots and overruling the challenges to 20 ballots. He made no recommendation as to 26 economic strikers.

The regional director's report was mailed to the parties on February 5, 1976. Both the employer and the WCT mailed exceptions to the Executive Secretary in Sacramento on February 17. They were received on February 18 and 19 respectively. Former Section 20365(f)^{1/} of the regulations provided, "The conclusion(s) and recommendation(s) of the regional director set forth in the report provided for in (1) above will be final unless exceptions to his conclusion(s) and recommendation(s) are filed by a party with the Executive Secretary in Sacramento, within five days following receipt of the regional director's report."

In Sam Andrews' Sons, 2 ALRB No. 28 (1976), we held that if exceptions to a challenged ballot report are mailed within five days of receipt of the report, they are timely filed. We do not know on what date the regional director's report reached the recipients, but it is unlikely that it took seven days to travel from one location to another in the same town. Therefore, normally we would dismiss these objections. Sunnyside Nurseries, Inc., 2 ALRB No. 3 (1976). However, in this case, the regional director's report was mailed on February 5, 1976, and the ALRB regional offices

^{1/} 8 Cal. Admin. Code Section 20365 (f) repealed and re-enacted as 8 Cal. Admin. Code Section 20363(b) of the new Regulations.

ceased operations on the 6th. Because of the unique circumstances and possible confusion, we will consider the exceptions.

None of the parties excepted to the regional director's recommendation to sustain 20 2/ and to overrule three.3/ of the challenges. Accordingly, we accept the regional director's recommendations as to these ballots.

There were two challenged ballots in the "no identification" category.4/ The regional director reported that at the time of the election, both employees signed declarations stating that they worked for the employer. The regional director found that they were on the eligibility list and that a subsequent check of their payroll signatures matched their signatures on the declarations. Accordingly, the regional director recommended overruling the challenges. The WCT did not except, and the employer took exception without alleging specific facts to refute the regional director's findings.

The employer asserted that it was not afforded the opportunity to examine the declarations of the employees, that

2/Mario Bancifra, Jesus Castaneda, Amparo Garcia, Andres A. Jimenez, Andres Lara, Pablo Piedra, Arnolfo Reyes, Jose Zambrano (did not work during the appropriate period); Joel Carranza, Carlos Fuentes, Juan Gonzales, Ignacio A. Jimenez, Pablo de Leon, Juan Maneja, Luis Lopez Navarro, Braulio M. Nodorra, Roberto Quezada, Mauro Ramos, Roberto Rullas (moved and could not be located); Jose Lerma (voted twice),

3/Augustine Bautista, Heriberto G. Escobar, and Sotero Siason.

4/Gregorio Alarcon, Moises Garcia.

the persons in question had no evidence of employment such as a paycheck, and that they did not appear on the applicable payroll preceding the filing of the petition. It is incumbent upon the excepting party to substantiate its allegations and its disagreements with the regional director. In the absence of evidence in support of the contentions of the objecting party, we rely on the report of the regional director and overrule the challenge to the ballots of Gregorio Alarcon and Moises Garcia. M.V. Pista, 2 ALRB No. 8, Sam Andrews' Sons, *supra*.

According to the regional director, Petra Hernandez was erroneously listed as Pedro Hernandez. No evidence was offered to contradict this finding and the challenge is overruled.

Of the fourteen ballots challenged because the voters were not on the eligibility list, ten belonged to people found by the regional director to have worked during the appropriate pay period of December 4 to December 10, 1975, but to have received their pay checks as part of a family unit.^{5/} The regional director noted that it is a common practice in agricultural employment for one family member to receive in his or her name the paycheck representing the cumulative efforts of two or more family members. In this situation, the family members not receiving paychecks in their names did not appear on the eligibility list.

^{5/}Alejandro (Alex) Domez, Julian Domez, Juanita Garza, Maria Garza, Lupe Garza, Joe Hernandez, Lidia Hernandez, Mario Hernandez, Elva Ramirez, and Rosa Reyes.

After considering the declarations from the alleged employees, Valdora employment records, declarations and pay-checks from the family members on the payroll, and declarations from witnesses who observed the voters in question at work, the regional director concluded that the following workers were assisted by one or more of the challenged voters:

1. Rosa Doney's paycheck in the amount of \$338.00 for three days of work on December 8, 9, and 10 included pay for her father, Alejandro (Alex) Doney, and her brother, Julian Doney.

2. Lupe Garza assisted Cirildo Garza who earned \$208.00 for planting on December 8, 9, and 10.

3. Jose Garza was paid \$363.00 for working on December 8, 9, and 10. The check reflected the work of Jose's wife, Juanita, and their daughter, Maria; apparently the husband and wife alternated as recipients of the family check.

4. Petra Hernandez received a paycheck for \$377.00 for working on December 8, 9, and 10. Apparently she was assisted by Joe, Lidia, and Mario Hernandez.

5. Elva Ramirez assisted Pedro Ramirez and,

6. Rosa Reyes assisted her husband, Pilar Reyes on December 8 and 9th.

While Section 1157 of the Labor Code does specify that a voter's name must appear on the employer's payroll, it was not the intent of the Legislature to disenfranchise employees who worked during the appropriate period but whose names were left off the payroll by the employer. M.V. Pista, supra. Fn. 1, states,

" [We] note that the names of those employees, who for purposes of mutual convenience did not appear on the payroll list must be included on the eligibility list pursuant to Title 8, Cal. Admin. Code 20310 (d) (2) . " We held in Yoder Brothers Inc., 2 ALRB No. 4 (1976) that, "employees who are paid or are entitled to be paid for the applicable payroll period are eligible to vote . "

Since neither the employer nor the WCT offered evidence to refute the regional director's findings, that the ten people discussed above worked during the eligibility period, we overrule the challenges to their ballots.

Teresa Moran did not appear on the eligibility list and stated she was on sick leave with a reasonable expectation of returning to work. The regional director recommended that the challenge to her ballot be overruled. We remand her ballot for further investigation, pursuant to the guidelines in Rod McLellan Co., 3 ALRB No. 6. Her ballot will be counted if it appears that she would have performed work for the employer, but for an absence due to illness or vacation. In deciding her eligibility, the Board will consider such factors as the employee's history of employment, continued payments into insurance funds, contributions to pension or other benefit programs, and any other relevant evidence which bears upon the question of whether or not there was a current job' or position actually held by her during the relevant payroll period. Rod McLellan, supra.

Three employees were not on the employer's payroll records, but the labor contractor and foreman of the citrus crew,

Oscar Ortega, confirmed that they did work for the employer during the eligibility period. Since the employer and the WCT did not offer any contradictory evidence in their exceptions, we accept the regional director's findings and overrule the challenges to the ballots of Raul Lopez, Eduardo Toronga, and Miguel P. Villanueva.

There were 26 ballots in the economic striker category.^{6/} The regional director made no recommendations as to these voters, stating that the Board is currently considering the disposition of economic striker challenges. We are not currently apprised of facts that would permit us to dispose of the economic striker challenges. Therefore, we remand the ballots to the regional director. If after a count of the overruled ballots, the votes of the economic strikers are still determinative, the regional director will conduct an investigation in accordance with the standards set out in Pacific Tile and Porcelain Co. , 137 NLRB 1358 (1962).

We now turn to the employer's objection that the petition for election was not timely filed under Section 1156.3(a)(1) with respect to peak of season. Section 1156.3(a)(1) reads, "the number of agricultural employees currently employed by the employer named in the petition, as determined from his payroll immediately

^{6/}Alberto Cajica, Francisco Chavez, Consuela Diaz, Maria Del Carmen Hau, Rosa Maria Hau, Arcadio Haneran, Maria Herrera, Juan Hernandez, Rachel Hernandez, Santos De Leon, Alicia Ponce, Maria Teresa Ramirez, Salvador Ramirez, Abundio Rodriguez, Dora A. Rodriguez, Eulogio Rodriguez, Flora A. Rodriguez, Juanita Soto Rodriguez, Maria Guadalupe Rodriguez, Maria E. Rodriguez, Marsedalia Rodriguez, Michaela Reyes Rodriguez, Pedro Rodriguez, Jose Ortiz Soto, Juan Antonio Soto, Maria Guadalupe Soto.

preceding the filing of the petition, [must not be] less than 50 percent of his peak agricultural employment for the current calendar year."

The employer supplied information to the Board stating that at peak, it employs 329 workers and that at the time of filing of the petition 153 people were employed. In computing the eligibility list, the employer erroneously excluded the names of ten workers being paid in family units and of three employees who should have been on the list of the citrus crew. The regional director overruled challenges to the 13 ballots stating that these employees should have been included in the eligibility list. We agree with the regional director's findings. Thus, when the 13 names are added to the employer's figure of 153, we arrive at 166 names which is more than 50 percent of 329. Accordingly, the employer's objection as to peak is dismissed.

The employer also objected that the Board conducted the election in violation of Section 20355 of the 1975 regulations 7/ in that the eligibility period exceeded the last payroll period of the employer immediately prior to the filing of the petition. The employer's payroll period extended from December 4, 1975, through December 10, 1975, and the notice and direction of election established the eligibility period from December 3, 1975, through December 10, 1975.

^{7/}Section 20365 has been changed in the new regulations to Section 20352 (a) (1).

The employer used the proper time period in preparation of the eligibility period and moreover there is no evidence that any voters were not employed during the payroll period of December 4 to December 10. There is no evidence that any party was prejudiced by the inclusion of the extra day or that the vote was affected by the error. Therefore, the election should not be set aside. We dismiss the employer's objection.

CONCLUSION

The regional director is ordered to open and count the ballots of employees listed in Appendix A. The challenges to the ballots listed in Appendix B are sustained in accordance with the discussion above. If the votes of the economic strikers are still determinative, the regional director shall conduct an investigation to determine their eligibility. The factors to be considered are: the last day each employee worked for the employer, the reason he or she ceased work, the employer's established practice with respect to rehiring former employees in the next season, whether the employees had performed seasonal or year-round labor and if seasonal, when during the year they are commonly employed, and finally, whether each employee engaged in activities since the commencement of the strike that are inconsistent with and constitute abandonment of his or her economic striker status.

Dated: February 4, 1977

Gerald A. Brown, chairman

Robert B. Hutchinson, Member

Ronald Ruiz, Member

APPENDIX A

Gregoria Alarcon
Moises Garcia
Augustine Bautista
Heriberto G. Escobar
Petra Hernandez
Sotero Siason
Alejandro Donez
Julian Donez
Juanita Garza
Maria Garza
Lupe Garza
Joe Hernandez
Lidia Hernandez
Mario Hernandez
Elva Ramirez
Rosa Reyes
Raul Lopez
Eduardo Toronga
Miguel P. Villanueva
(Teresa Morales)

APPENDIX B

CHALLENGES SUSTAINED

Jose Lerma
Mario Bancifra
Jesus Castaneda
Amparo Garcia
Andres A. Jimenez
Andres Lara
Pablo Piedra
Arnolfo Reyes
Jose Zambrano
Joel Carranza
Carlos Fuentes
Juan Gonzalez
Ignacio A. Jimenez
Pablo De Leon
Juan Maneja
Luis Lopez Navarro
Braulio M. Nodorra
Robert Quezada
Mauro Ramos
Roberto Rullas

MEMBER JOHNSEN, dissenting:

I dissent from the majority opinion as it pertains to the principle adopted concerning the eligibility of one employee, Teresa Moran, whose name did not appear on the voter eligibility list. This employee claims that she was on sick leave with a reasonable expectation of returning to work, and the majority finds her to be an eligible voter based on their reasoning in Rod McLellan Co., 3 ALRB No. 6 (1977). I would not find her to be eligible for the reasons expressed in my dissenting opinion to Rod McLellan Co.

Dated: February 4, 1977

Richard Johnsen, Jr. , Member