

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

ROBERTS FARMS, INC.,)	
)	
Employer,)	Case No. 75-RC-118-F
)	
and)	
)	
UNITED FARM WORKERS)	6 ALRB No. 5
)	
OF AMERICA, AFL-CIO,)	(5 ALRB NO. 22)
)	
Petitioner,)	
)	
and)	
)	
WESTERN CONFERENCE OF)	
TEAMSTERS, AGRICULTURAL)	
DIVISION, IBT, AND ITS)	
AFFILIATED LOCALS 116,)	
136, 274, 542, 630, 865,)	
890, 898, and 1973,)	
)	
Intervenor,)	
)	
and)	
)	
SUMNER PECK RANCH, INC.,)	
)	
Intervenor.)	
)	

DECISION ON CHALLENGED BALLOTS

Pursuant to the provisions of Labor Code Section 1146, the Agricultural Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The tally of ballots issued at the conclusion of a representation election conducted among the agricultural employees of Roberts Farms, Inc. (Employer) at its DiGiorgio Ranch on November 3, 1975, showed the following results:

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Teamsters	104
UFW	93
No Union	13
Void Ballots	7
Challenged Ballots	<u>151</u>
Total Valid Ballots	361

As the challenged ballots were sufficient in number to determine the outcome of the election, the Regional Director conducted an investigation and, on July 21, 1977, issued a report on challenged ballots. Exceptions to the report were filed by the Employer and the UFW and were considered by the Board in its Decision in Roberts Farms, Inc., 5 ALRB No. 22 (1979). The Board sustained 75 and overruled 70 of the challenged ballots, but determined that it could not resolve the six remaining challenged ballots on the basis of the record before it at that time. Accordingly, the Regional Director was ordered to open and count the ballots to which challenges had been overruled, issue a revised tally of ballots, and conduct further investigation or hearing with respect to the remaining challenges, should they become outcome-determinative.

The revised tally of ballots showed the following results

Teamsters	115
UFW	142
No Union	23
Void Ballots	7
Challenged Ballots	<u>5</u>
Total Valid Ballots	286

As no party had received a majority of the valid votes cast, the Regional Director reopened the investigation and on October 19, 1979, issued an amended report on challenged ballots in which he recommended that all six of the outstanding challenges be overruled.

Summer Peck Ranch, Inc. intervened as purchasers of Roberts Farms and filed exceptions to five of the Regional Director's recommendations. The UFW filed a brief in response to the said exceptions and in support of the Regional Director's recommendations. Intervenor Peck thereafter submitted a brief in reply.

The Board has considered the Regional Director's amended report and recommendations in light of the exceptions and briefs of the parties and has decided to overrule one challenge, sustain another, and remand for hearing the four remaining challenges should they prove outcome-determinative upon issuance of a second revised tally of ballots.

Guadalupe Rangel

The Regional Director recommended that the challenge to Rangel's ballot be overruled. No exceptions were filed by any party. Accordingly, we adopt, pro forma, the recommendation of the Regional Director and hereby overrule the challenge to Guadalupe Rangel's ballot.

Herminia Vargas de Rodriquez

Mrs. Rodriquez declared that she had left Roberts Farms' employ on November 5, 1972, and did not thereafter work for any employer, but would have returned to Roberts Farms after the

strike. The Regional Director did not indicate whether Mrs. Rodriguez made these statements at the time of the election, in the course of a post-election investigation in 1975, or during a subsequent investigation in 1977. Assuming, however, that they were made at the earliest of these dates, at least three years had passed between the date Mrs. Rodriguez voluntarily ceased working altogether and the date on which she voted in the election. We find that such lapse in time is a sufficient basis upon which to conclude that she had withdrawn from the labor market and thus had effectively abandoned her interest in continued employment with Roberts Farms. See Coachella Imperial Distributors, 5 ALRB No. 73 (1979). Accordingly, the challenge to Mrs. Rodriguez' ballot will be sustained.

Carmen Garcia Jesus
Serna Concepcion T. Gamboa
Judith Loya Vitervo

In our initial Decision in this proceeding, we concluded that conflicting evidence as to each of these four challenged voters raised a factual dispute requiring further investigation or hearing. As revealed in the amended report on challenged ballots, the Regional Director reopened the investigation but failed to discover any other evidence that would resolve the factual conflicts. We therefore reserve ruling on these challenges until such time as we have benefit of a report from an Investigative Hearing Examiner following a hearing on challenged ballots.

In accordance with this Decision, we hereby sustain the challenge to the ballot of Herminia Vargas de Rodriguez, and

and direct the Regional Director to open and count the ballot of Guadalupe Rangel, and thereafter to issue and serve upon all parties a second revised tally of ballots. If the said tally of ballots indicates that no ballot choice has received a majority of the valid votes cast in the election, the Executive Secretary shall set for hearing the issues raised by the challenges to the ballots of Carmen Garcia, Jesus Serna, Concepcion T. Gamboa, and Judith Loya Vitervo.

Dated: January 22, 1980

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

CASE SUMMARY

Roberts Farms, Inc.(UFW)(WCT)
(Sumner Peck Ranch, Inc.)

6 ALRB No. 5
(5 ALRB No. 22)
Case No. 75-RC-118-P

BOARD DECISION

In the initial decision on challenged ballots in this proceeding, Roberts Farms, Inc., 5 ALRB No. 22 (1979), the Board sustained a number of challenges and overruled certain others but deferred resolution of challenges to six remaining ballots pending further investigation or hearing should they prove outcome-determinative. Accordingly, the Regional Director opened and counted the ballots to which challenges had been overruled and issued a revised tally of ballots which indicated that no party had yet received a majority of the valid votes cast. Thereafter, the Regional Director reopened the challenged ballots investigation and subsequently issued an amended report on challenged ballots. In the instant decision, the Board sustained one challenge, overruled another, and deferred determination as to the four remaining challenges pending a hearing to be held in the event they prove to be outcome-determinative after issuance of a second revised tally of ballots.

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