

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

|                        |   |                     |
|------------------------|---|---------------------|
| FARMER JOHN EGG        | ) |                     |
| ENTERPRISES, INC.,     | ) |                     |
|                        | ) |                     |
| Employer,              | ) | Case No. 83-RC-12-D |
|                        | ) |                     |
| and                    | ) |                     |
|                        | ) | 10 ALRB No. 15      |
| UNITED FARM WORKERS OF | ) |                     |
| AMERICA, AFL-CIO,      | ) |                     |
|                        | ) |                     |
| Petitioner.            | ) |                     |
| <hr/>                  |   |                     |

DECISION AND ORDER ON CHALLENGED BALLOTS

On October 11, 1983, the United Farm Workers of America, AFL-CIO (UFW) filed a Petition for Certification as the exclusive bargaining representative of all the agricultural employees of Farmer John Egg Enterprises, Inc. (Employer) in its operations in and around Bakersfield, California.

On October 18, a representation election was conducted among the employees of the Employer. The official Tally of Ballots served upon the parties revealed the following results:

|                              |           |
|------------------------------|-----------|
| UFW . . . . .                | 24        |
| No Union . . . . .           | 21        |
| Challenged Ballots . . . . . | <u>10</u> |
| Total . . . . .              | 55        |

As the challenged ballots were sufficient in number to determine the outcome of the election, the Delano Regional Director (RD) of the Agricultural Labor Relations Board (Board) conducted an investigation and on November 18, 1983, issued his Report on

Challenged Ballots. The Employer and the UFW timely filed exceptions to the RD's report and accompanying briefs.

Pursuant to the provisions of Labor Code section 1146,<sup>1/</sup> the Board has delegated its authority in this matter to a three-member panel.

We affirm the RD's finding regarding the ballot of Jose Martinez and sustain the challenge to this voter. The Employer's conclusory statements in its brief are insufficient, absent declaratory support, to overturn the RD's recommendation. (Miranda Mushroom Farms (1980) 6 ALRB No. 22; Mayfair Packing Company (1933) 9 ALRB No. 66.)

We affirm the RD's finding regarding the ballots of Nancy Apellido, Teofilo Chavez Blumada and Juan Canizales. The declarations provided by the UFW regarding these employees do not raise any material question of fact disputing the RD's findings. (See, e.g., Karahadian Ranches (1979) 5 ALRB No. 19.) We therefore overrule the challenges to these three ballots and direct the RD to open and count the ballots.

We find the declarations provided by the Employer and the UFW raise material questions of fact regarding the voting eligibility of Maria Cadena, Carmen Calderon, Cruz Duran, Pete Olivares, Dan Rodriguez and Mary Alice Skaggs. Accordingly, we will direct that the Executive Secretary of the Board set an investigative hearing on the status of these prospective voters. At the hearing, the investigative hearing examiner will hear

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<sup>1/</sup>All section references herein are to the California Labor Code unless otherwise specified.

evidence concerning the following issues:

1. Are Carmen Calderon, Cruz Duran, Pete Olivares and Mary Alice Skaggs eligible voters or are any of them supervisory employees?
2. Is Maria Cadena an agricultural employee and hence eligible to vote?
3. Is Dan Rodriguez a part-time guard; that is, do his duties include the responsibility for enforcing rules against employees designed to protect the property of the Employer or to protect the safety of persons on the Employer's premises? If so, should the Board include part-time guards in the bargaining unit with other agricultural employees, notwithstanding E & J Gallo Winery (1979) 5 ALRB No. 57?

ORDER

The challenge to the ballot of Juan Martinez is hereby sustained. The Regional Director is hereby ordered to open and count the ballots of Nancy Apellido, Teofilo Chavez Blumada and Juan Canizales and thereafter prepare and serve upon the parties a new tally of ballots. The Executive Secretary is directed to convene an investigative hearing to determine the status of the remaining voters as set forth above.

Dated: March 28, 1984

ALFRED H. SONG, Chairman

JOHN P. MCCARTHY, Member

JEROME R. WALDIE, Member

CASE SUMMARY

Farmer John Egg Enterprises, Inc.  
(UFW)

10 ALRB No. 15  
Case No. 83-RC-12-D

REGIONAL DIRECTOR'S REPORT ON CHALLENGED BALLOTS

A representation election was held for the agricultural employees of Farmer John Egg Enterprises, Inc., and an outcome-determinative number of the ballots were challenged. In his Report on Challenged Ballots, the Regional Director recommended that five of the challenges be sustained and five overruled. Both the United Farm Workers of America, AFL-CIO and the Employer filed objections to the Regional Director's report.

BOARD DECISION

The Board affirmed the Regional Director's report in part and set for investigative hearing six of the challenged ballots. The Board rejected exceptions filed by the UFW and the Employer because they either were based on conclusory statements or the declarations filed in support of the exceptions failed to raise any material question of fact disputing the RD's findings.

\* \* \*

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

\* \* \*

STATE OF CALIFORNIA  
 AGRICULTURAL LABOR RELATIONS BOARD



In the Matter of: )  
 )  
 FARMER JOHN EGGS ENTERPRISES, )  
 )  
                   Employer, )  
 )  
 and )  
 )  
 UNITED FARM WORKERS OF AMERICA, )  
 AFL-CIO, )  
 )  
                   Petitioner. )  
 )

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Case No. 83-RC-12-D  
Regional Director's Report  
on Challenged Ballots. \_\_\_

On October 18, 1983, a secret ballot election was conducted in the above-captioned case among the agricultural employees of the Employer under the supervision of the Agricultural Labor Relations Board, herein called the Board, pursuant to a Notice of Direction of Election issued by the Regional Director on October 17, 1983. The results of the election were:

|                                |    |
|--------------------------------|----|
| United Farm Workers of America | 24 |
| No Union                       | 21 |
| Challenged Ballots             | 10 |

As the challenged ballots are determinative of the results of the election, the Regional Director, pursuant to 8 Cal. Admin. Code §20363 (a), conducted an investigation of the eligibility of the ten challenged voters:

1. Pete Olivarez
2. Mary Alice Skaggs
3. Teofilo Chavez Blumada
4. Dan Rodriguez

5. Carmen Calderon
6. Maria Cadena
7. Jose Martinez
8. Cruz Duran
9. Juan Canizales
10. Nancy Apellido

As a request of the investigation, the following conclusions and recommendations are made:

1. Pete Olivarez was challenged by the UFW for being a confidential employee and supervisor. In support of its challenge, the UFW alleges various facts to show that Olivares had authority to independently set egg prices, collect money for the company owner, and direct or influence company personnel policies and decisions.

The employer alleges that Olivares is merely a driver's helper for employee Dan Rodriguez. The Employer denies that Olivares has independent authority or assists in confidential or supervisory matters.

#### Analysis and Recommendation.

Pete Olivarez has worked for the company since early 1981. His role in delivering eggs requires delivering egg orders and collects some cash on certain purchasers. He does not solicit sales and does not do any pricing on eggs. He serves as a translator at times. Although he does not get paid anymore than comparable employees, he does receive cut-rate rent from one of the company's apartments in which he resides.

On one occasion his half-brother was hired for about 6 weeks although Pete Olivarez denies having recommended him for the job. The U.F.W. has alleged that Olivarez has questioned other workers about their union activities. There is also evidence that he socializes with the owner John Lewis on various occasions.

Apart from the instances and information listed above, there is insufficient evidence to suggest that Pete Olivarez is indeed a supervisor or confidential employee. I therefore recommend that his challenged ballot be overruled and his ballot counted.

2. Mary Alice Skaggs was challenged by the UFW for being a confidential employee and bookkeeper. In support of its challenge, the UFW alleges that Skaggs had access to confidential employee information, recommended hiring and firing, and other factors.

The employer alleges that Skaggs is merely a bookkeeper, has no access to confidential materials, and has no role in labor relations.

#### Analysis and Recommendation.

Ms. Skaggs as stipulated by the company is a bookkeeper; however, the company maintains a Certified Public Accountant which deals with more "confidential" information. She does prepare payroll and manages all the accounts receivable in relation to the company's operations. She, however, does not prepare any income tax or performs functions as a confidential employee.

It is quite apparent, however, that she does perform duties attributed to a supervisor. Ms. Skaggs recommended the hiring of her niece to assist her in the bookkeeping operation. Ms. Skaggs indicated that she oversees and directs her work. Ms. Skaggs' niece, has signed a declaration under the penalty of perjury that her Aunt, Ms. Skaggs, is her supervisor and directs her work.

There is some evidence that Ms. Skaggs makes some independent judgments such as developing the vacation leave schedule for employees. Although there is insufficient evidence to make a determination that Ms. Skaggs is a confidential employee, there is sufficient evidence that she is a supervisor. I therefore recommend that the challenge to her ballot should be sustained.

3. Teofilo Chavez B. was challenged by the UFW for being a confidential and managerial employee. The UFW alleges that Chavez acts as a sharecropper with the company owner on company land, that Chavez' father-in law is company manager Robert Gonzales, and other factors.

The employer alleges that Chavez is merely an egg packer and is in no way a confidential or managerial employee.

#### Analysis and Recommendation.

Teofilo Chavez' job is one of being an egg packer and is paid \$3.95 per hour. He also cultivates squash and corn on a parcel of land owned by the company. Chavez works about 4 hours, 2 or 3 days a week cultivating the parcel of land. When he does this he continues to be on the company's payroll. The harvest of the squash and corn goes to the



owner and can be considered an enterprise of the company. Chavez obtains no share of the harvest or proceeds. His son on occasion helps Chavez cultivate the land. The parcel is about 50 ft. in length.

There is insufficient evidence to suggest that Teofilo Chavez is anything other than an agricultural employee and I therefore recommend that this challenged ballot be overruled and his vote counted.

4. Dan Rodriguez was challenged by the UFW for being a guard. The UFW alleges that Rodriguez acts as the night guard, lives on company property rent-free, controls access to the ranch, and receives calls for the company after business hours. The employer alleges that Rodriguez is a truck driver and merely opens the gate in the morning. The employer denies that Rodriguez is charged with enforcing company rules against other employees or persons on company property.

Analysis and Recommendation.

Dan Rodriguez has worked for the company since 1960. His daytime duties are being a truck driver and delivering eggs,

Rodriguez lives on company property paid for by the employer, he has lived there for the past 6 years. During the evening he locks the gates and opens them at set hours. In case of an emergency he is to call the employer. There is a company telephone for in-coming calls next to his house. Dan is compensated for his evening duties by free rent.

The Board has consistently stated that security guards are excluded from coverage under the ALRA. E & J Gallo

Winery, 5 ALRB No. 57, pp. 38-41. The NLRB prescribes the inclusion of guards and other employees in the same bargaining unit. Like the NLRB, this Board had decided that mixing the guards and other workers in the same bargaining unit would be a "significant source of instability and a potential cause of increased violence and are, therefore, inimical to the purposes and policies of the Act."

The investigation of Rodriguez' job duties clearly show that, after business hours, he possesses sufficient indicia of a security guard. In cases where an employee has both guard and non-guard duties, the NLRB considers the nature of the employee's duties to be controlling over the percent of time spent on guard duties. Larand Leisurelies, Inc. (1976) 222 NLRB 838. Rodriguez is clearly identified as a part-time guard. The possibility of divided loyalty between the employer and the union, the "key concern" behind the rule excluding guards, is present in Rodriguez' case. Therefore, I recommend that the challenge to his ballot be sustained.

5. Carmen Calderon was challenged by the UFW for being a non-agricultural employee. The UFW alleges that Calderon manages and supervises the company's mini-mart with independent authority.

The employer maintains that Calderon's job duties are strictly incidental to and in conjunction with the Employer's agricultural operations.

#### Analysis and Recommendation.

Carmen Calderon indicated that she sets prices for the various items sold. In the store, everything is sold

from oil, food, medicines, etc., items typical to a corner store; however, records indicate that at least 75% of items sold are eggs produced by the employer.

It is evident that the store is incidental to the agricultural operations of the employer; however, Carmen Calderon assumes a large degree of independent judgment in ordering and pricing stock items. Employees can request from Calderon certain items which are then ordered by her. It is clear that Calderon independently manages the minimarket.

Carmen Calderon also supervises an agricultural employee who works at the store 2 hours per-day and is her replacement when Carmen takes vacation. She instructs the employee what to reshelve, price, other job assignments, etc.

I recommend that the challenge to Ms. Calderon's ballot be sustained on the basis of her manager/supervisor status.

6. Maria Cadena was challenged by the UFW for being a non-agricultural employee and family member. The UFW alleges that Cadena's long-standing close relationship with the owner, her 1982 alleged supervisory status, and her current job selling company eggs in downtown Bakersfield, made her ineligible to vote.

The employer contends that Cadena's duties are incidental to and in conjunction with the employer's agricultural enterprise. Cadena is not a relative of the company owner.

Analysis and Recommendation.

Mary Cadena has worked for the company for some 25 years. She is paid \$3.85 per hour. Last year she was employed at the processing plant. During the election filed by the UFW she was challenged for being a supervisor. Her status was not investigated since the challenged ballots were not outcome determinative.

Her duties in the processing plant ended on February 2, 1982, when the processing was moved to a new location on the ranch.

Her temporary job is to sell eggs at an outlet shared by a produce market. Her duties are to sell eggs pre-priced by the plant. She sells no other items except sodas. She is the only employees at that outlet. The sale of eggs is incidental to the agricultural operations of the employer and require minimal independent judgment by Ms. Cadena. Ms. Cadena is also not related to the Lewis family. I recommend that the challenge to Ms. Cadena's ballot be overruled and her vote counted.

7. Jose Martinez was challenged by the UFW for being a supervisor. The UFW alleges that Martinez' acts as supervisor of the breeder ranch, giving orders to agricultural employees and directing their work, disciplining employees, and recommending discharges. The employer maintains that Martinez merely translates orders between management and spanish-speaking employees.

Analysis and Recommendation.

Jose Martinez has worked for 14 years for the company.

He is assigned to the breeder ranch which raises baby chickens. In a personal interview, Jose Martinez indicated that he is in charge of the breeder ranch and directs the work of the other two employees. He can recommend firing and disciplinary action. George Kim, one of the company's managers at times does not go to the breeder ranch for periods of up to 2 weeks. During a Board agent interview, Martinez was supervising the work of 4 workers in repairing the hen houses.

There are also declarations from employees to support the contention that Jose Martinez is a supervisor. I recommend that the challenge to Jose Martinez's ballot be sustained and his vote not counted.

8. Cruz Duran was challenged by the UFW for being a supervisor and confidential employee. The UFW alleges that Duran does the following:

- 1) Gives direct orders to agricultural employees.
- 2) Directs work schedule of agricultural employees;
- 3) Recommends discipline, reprimands employees.
- 4) Reviews time cards.
- 5) Reports to owner John Lewis.

The UFW alleges that company owner John Lewis warns agricultural employees to follow Cruz Duran's directives. The employer contends that Duran is merely an agricultural worker, without the authority attributed to a supervisor or confidential employee.

Analysis and Recommendation.

Cruz Duran works in the processing plant and has

worked for the company since 1975. Ms. Duran denies being a supervisor. She however, contradicted much of her Board agent interview.

There are several declarations by employees that work with Ms. Duran that indicate under penalty of perjury that she is in fact a supervisor. In a declaration by Cruz Duran taken at the time of the election, she admitted overseeing the work of others. She is also by her own admittance, a trainer of new employees.

There are witnesses who state that John Lewis (owner) instructed employees to follow Ms. Duran's directives and appointed her in charge of her department.

There is sufficient evidence to show that Ms. Duran performs duties attributed to a supervisor's role and I therefore recommend that the challenge to her ballot be sustained.

9. Juan Canizales was challenged by the UFW for being a managerial employee and hired for the purpose of voting in the election. The UFW alleges that Canizales was transferred to the company's agricultural payroll and began performing ranch work after the union organizational drive became known. The employer contends that Canizales was hired on August 1, 1983, long before the RC petition of October 10, 1983, to build and repair chicken coops and brooder houses.

#### Analysis and Recommendation.

Juan Canizales has worked exclusively on John Lewis' apartment complexes until August 1, 1983. The filing of the intent to take access was on 10/4/83 and the RC Petition on

10/11/83. The UFW has not provided evidence that he was hired exclusively for the purpose of voting. His hiring to do ranch work appears far removed from the election and there is no substantial evidence to indicate that he is a manager or supervisor.

He does direct some work because of his knowledge of machinery, but not enough to prove he is a supervisor. I therefore recommend that the challenge to his ballot be overruled and his vote counted.

10. Nancy Apellido was challenged by the UFW for being a confidential and managerial employee and for being a bookkeeper. The UFW alleges that Apellido has access to confidential payroll and salary data and recommends hiring.

The employer contends that Apellido is an assistant bookkeeper with no duties attributed to a confidential employee.

Analysis and Recommendation.

Nancy Apellido started work in June, was recommended by her Aunt Mary Skaggs to be hired. Her duties are the following:

- 1) Assist in accounts receivable.
- 2) Reviews invoices from routes.
- 3) Handles statements.
- 4) Receives checks/deposits in bank.

Her supervisor is Mary Skaggs. There is no evidence to substantiate that she is a confidential employee or in a managerial position.

She requested that her husband be hired and was

subsequently hired. This is the only evidence of a hiring based on her recommendation.

Lacking sufficient evidence to sustain her challenged ballot, I recommend that her vote be counted.

CONCLUSION

Based upon the investigation conducted, it is recommended that the challenges to the following ballots be overruled and counted:

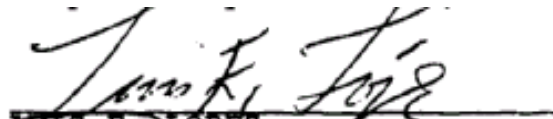
Pete Olivarez  
Teofilo Chavez B.  
Maria Cadena  
Juan Canizales  
Nancy Apellido

It is further recommended that the challenges to the following ballots be sustained:

Mary Alice Skaggs  
Dan Rodriguez  
Carmen Calderon  
Jose Martinez  
Cruz Duran

Dated: November 18, 1983

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Luis E. Lopez", written over a horizontal line.

LUIS E. LOPEZ  
Delano Regional Director  
Agricultural Labor Relations Board



STATE OF CALIFORNIA

AGRICULTURAL LABOUR RELATIONS BOARD

PROOF OF SERVICE BY MAIL  
(1013a, 2015.5 C.C.P.)

I am a citizen of the United State, and a resident of the County of  Kern . I am over the age of eighteen years and not a party to the within entitled action. My Residential addresses is:  627 Main Street, Delano, CA 93215 .

On  November 18, 1983  I served the within    
 REGIONAL DIRECTOR'S REPORT ON CHALLENGED BALLOTS.

83-RC-12-D

on the parties in said action, by placing a true cop y thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at  Delano , California addressed as follows:

CERTIFIED MAIL

Sid Chapin, Esq.  
Werdel, Chapin, Leverett  
544 California Avenue  
Suite 140  
Bakersfield, CA 93389

United Farm Workers of America  
AFL-CIO  
Legal Office  
P. O. Box 30  
Keene, CA 93531

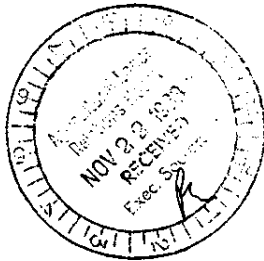
REGULAR MAIL

Karl Lawson  
UFW  
10913 Main Street  
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419 E. Cooper Road  
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Farmer John Egg Enterprises, Inc  
2416 "N" Street  
Bakersfield, CA 93301

Executive Secretary  
915 Capitol Mall, Third Floor  
Sacramento, CA 95814



Executed on  November 18, 1983  at  Delano , California.

I certify (or declare), under penalty of perjury that the foregoing is true and correct.

A handwritten signature in cursive script, appearing to read "Celida Rojas", written over a horizontal line.