OXNARD, CALIFORNIA

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

COMITE **83,** SINDICATO de TRABAJADORES CAMPESINOS LIBRES, Petitioner, and, UNITED FARM WORKERS OF AMERICA, AFL-CIO, Certified Bargaining Representative, and, HIJI BROTHERS, INC. & SEAVIEW GROWERS, INC., Employer.	Case No. 86-RD-8-SAL(OX) 13 ALRB No. 16

DECISION ON CHALLENGED BALLOTS

This matter comes before the Board on the basis of exceptions to the Regional Director's Report on Challenged ballots.

Pursuant to the provisions of Labor Code section 1146,[1/] the Agricultural Labor Relations Board (ALRB or Board) has delegated its authority in this matter to a three-member panel. *2J*

[1/]All section references herein are to the California Labor Code unless otherwise specified.

[2/] The signatures of Board Members in all Board decisions appear with the signature of the Chairman first, if participating, followed by the signatures of the participating Board Members in order of their seniority.

On January 5, 1977, the United Farm Workers of America, AFL-CIO (UFW) was certified as the exclusive collective bargaining representative of all agricultural employees of Hiji Brothers in the County of Ventura, California. Notwithstanding the ostensibly limiting language of the Order of Certification, we assume, without deciding, that the Board contemplated at that time that the unit would be comprised of all agricultural employees of the Employer in the State of California as required by Agricultural Labor Relations Act (ALRA or Act) section 1156.2. The record reveals that the UFW and the Employer subsequently entered into a collective bargaining agreement covering a two-year period which will end on October 31, 1987.

On November 4, 1986, a rival union petition was filed by the Comite 83, Sindicato de Trabajadores Campesinos, aka Syndicate of Free Agricultural Workers (Comite),[3/] seeking to represent a unit described therein as all agricultural employees of Hiji Brothers, Inc. and Seaview Growers, Inc., in Ventura County. The Board finds nothing in its files to indicate that a Petition to Amend Certification or to Clarify Unit has been processed in order to alter the name of the employing entity or to

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[3/]The Comite filed its petition on an official ALRB form designated Petition for Decertification pursuant to section 1156.7(c) which requires at least a 30 percent showing of interest. However, the Regional Director properly treated the petition as one in which a rival union seeks certification under section 1156.7(d) in order to replace an incumbent union since the petition was filed during the last year of a contract "which would otherwise bar the holding of an election." That section requires that the petition be accompanied by authorization cards signed by a majority of the employees who are employed in the unit during

(fn. 3 cont. to p. 3)

redefine the scope of the unit as initially certified. Again, as with the preceding question, we assume, without deciding, that the

instant petition pertains to all agricultural employees of the Employer in the State of California.[4/]

In a representation election held on November 13, 1986, 199 individuals cast ballots even though there were only 158 names on the appropriate pre-petition eligibility list. The Tally of Ballots revealed the following results:

Comite	68
UFW	54
No Union	6
Void Ballots	2
Challenged Ballots	69
TOTAL	199

As the challenged ballots were sufficient in number to determine the outcome of the election, the Regional Director conducted an investigation and issued a Report on Challenged Ballots on February 6, 1987. All of the challenges were asserted by Board agents on the grounds that the name of the potential

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(fn. 3 cont.)

the applicable pre-petition payroll period, and that the petition be filed when the employer is at least at 50 percent of peak employment for the relevant calendar year within the meaning of section 1156.4.

[3/]It is elementary that a unit appropriate for decertification pursuant to section 1156.7(c) or 1156.3 (see Cattle Valley Farms (1982) 8 ALRB No. 24) must be coextensive with the unit previously certified. (Mayfair Packing Co. (1983) 9 ALRB No. 66.) The Board has never before had occasion to examine the applicability of that rule to rival union situations and need not do so in this instance.

voter did not appear on the Employer's eligibility list. In his Report, the Regional Director recommended that 62 of the challenges be sustained and that 7 of them be overruled.

Thereafter, the UFW filed exceptions to 50 of the challenges sustained by the Regional Director along with a brief in support of exceptions. The Employer did not except to any of the Regional Director's recommendations, but did file a brief in response to the UFW s exceptions .[5/]

[5/]The Board's Regulations clearly provide that any party may file exceptions to a Regional Director's Report on Challenged Ballots within a specified period of time. (Cal.Admin. Code, tit. 8, § 20363(b).) However, neither the Board's regulations nor any decision construing the regulations provide for the filing of an answer to another party's exceptions. The Employer's response does not purport to be exceptions although it states on its face that it is filed pursuant to California Administrative Code, title 8, section 20363(b), title 8, which governs exceptions to Regional Director's Report on Challenged Ballots. Nor was the document filed within the time alloted for the filing of exceptions. The UFW did not object to the filing of the response brief. We have reviewed the response and conclude that since the Employer's position was fully expressed to the Regional Director prior to issuance of his report on challenged ballots, and, the response adds no new information or argument of legal significance.

We do disagree with the Employer's suggestion that the UFW may have waived its right to except to the Regional Director's report since it allegedly failed to advise the Regional Director of its position on the challenged ballots during the latter's investigation of same. For example, the Employer states that the "Regional Director correctly addresses the fact that the UFW has clearly refused to participate in the Region's investigation." That same theme is in fact implicit in the Regional Director's report. Although the Board's regulations provide that a Regional Director may seek the positions and cooperation of the parties in the course of his or her investigation of challenged ballots, we perceive no authority, and the Employer cites none, for the proposition that a failure of cooperation diminishes a party's right to except to the ultimate report, either in whole or in part. Moreover, the contentions of the Union were clearly set

(fn. 5 cont. to p. 5)

Since no party excepted to the Regional Director's recommendations with respect to 12 challenges he would sustain or 7 challenges he would overrule, we adopt his findings and recommendations in that regard pro forma (emphasis added). Accordingly, we direct the Regional Director to open and count the ballots of the 7 employees whose challenges are hereby overruled,[6/] and to sustain the challenges to the ballots of the remaining 12 voters in this category.[7/]

There were 2 pre-petition eligibility periods, that of the Employer proper (October 29 through November 4) and that of Labor Contractor Martinez (October 26 through November 1).[8/] The findings and recommendations of the Regional Director with respect to the 50 challenges to which the Union excepts are reviewed below.

(fn. 5 cont.)

forth at the preelection conference and the pivotal question concerning the eligibility of the laid off celery harvest workers remained a question for the Regional Director independent of the position of any party.

[6/] Those ballots were cast by Estevan E. Garcia, Perez Alvaraz, Jose Jesus Aguayo, Aureliano Conde, Dominga Arroyo de los Santos, Arnulfo C. Pat and Ruben Perez Torres. In his Summary of Recommendations accompanying his report, the Regional Director inadvertently omitted Arnulfo C. Pat and Ruben Perez Torres but accounted for them in the text of his report.

[7/]The 12 challenges which we sustain were asserted against Luis R. Teran and Pedro Contreras Salazar; 6 lettuce employees on layoff status (Nicolas Reine Aguilar, Reynaldo Cabrera Flores, Jose Guerrero Padilla, Celestino Valencia Rivas, Alderito Resindez Segura and Jose Aguilar Tovar); and against 4 employees in a general labor classification, also on layoff status (Jose Runas Loera, Jesus Luna Pacheco, Jesus Peres Solorio and Daniel Ibarra Vargas).

[8/] All dates discussed herein are 1986 unless otherwise indicated.

Forty-Eight Celery Harvest Employees

Three celery harvest crews were laid off on July 14. The parties' collective bargaining agreement requires a written notice from the Employer to the Union (within five days of recall) as well as to the employees who are to be recalled according to seniority (not less than two weeks prior to start up), specifying an estimated recall date.[9/] By letter dated October 24, the Employer advised members of celery crews 1 and 2 that they could expect to return to work on or about November 5.[10/] Twenty-four employees did in fact resume work on November 5, after close of the pre-petition eligibility period. The twenty-one remaining employees in this group resumed work between November 6 and 20. The Regional Director concluded that since none of the employees were on vacation, sick leave, or "on call," and since no one received any wages during the applicable payroll period, all were indistinguishable from seasonal employees who had not yet been hired for the harvest. (Rod McLellan Co. (1977) 3 ALRB

[9/]Section J of article 4 of the contract states: "The Company shall notify the Union within five (5) workdays of seniority workers laid off or recalled by giving each worker's name, social security number, seniority date, job or commodity classification, and a date of recall or layoff. Grievances related to this paragraph shall be subject to the expedited grievance and arbitration procedure."

[10/]One such letter was included in the Regional Director's report. It states, in pertinent part, "You are hereby given official notice of recall for re-employment as a celery harvest [sic]. Work is anticipated to begin on 11/5/86. The estimated duration is approximately 150 working days. The exact starting date is subject to change, and the exact date can be obtained as follows, 48 hours in advance—(1) call the Company office [phone numbers listed]; (2) check the company bulletin boards; (3) check with the Union office; (4) call your supervisor."

No. 6 (McLellan).) Accordingly, the Regional Director recommended that all of the challenges in this category be sustained.

In reliance on Wine World (1979) 5 ALRB No. 41 (Wine World), the Union invites the Board to now do that which the Union believes the Board impliedly approved in that case; i.e., extend eligibility to employees, such as those in question here, who have more than a mere possibility of work in the future. The Union's argument turns on the Board's language in Wine World wherein it was suggested that "The NLRB [National Labor Relations Board] standard of 'reasonable expectation of rehire[1] is not necessarily inconsistent with our own eligibility rules." The Union then contrasts the facts in Wine World with those which prevail here and argues that no existing Board precedent covers the present situation. The major difference in this case, according to the Union, is the bargaining agreement requirement pursuant to which the challenged voters were guaranteed that they would resume work within a very short period of time. As the Union explains:

> Here the employees were not simply on call as in Rod McLellan or simply told that they might be recalled as in Wine World, but they actually were recalled to work and the only question that remained was when they would actually start to physically work. . . They no longer were simply on call and they definitely knew that they were going to be recalled and not simply that they might be recalled.

Under NLRB case law, as a general rule, employees are eligible to vote if they satisfy two distinct requirements: (1) employee must be employed and working during the designated payroll period (usually the period immediately preceding filing of the petition or the date the Direction of Election issued) and

(2) employee must be employed and working on the day of the election. Thus, an employee is not eligible even though hired and slated to report for work prior to the election but after the first condition of eligibility has passed. There is likewise no eligibility for an employee who is employed on the date the Direction of Election issues but who quits or is discharged prior to actual balloting.

In certain circumstances, the rules set out above have been modified, but only insofar as they extend eligibility consistent with the concept of a continuation of the employer-employee relationship. For example, an employee on sick leave is eligible if it can be shown that the employer considered him or her to have retained employment status on the basis of maintenance of seniority, payment of health insurance premiums, etc. With regard to employees on layoff status, eligibility turns on "whether there exists a reasonable expectancy of employment in the near future." (Higgins, Inc. (1955) 111 NLRB 797; D. H. Farms Co. (1973) 206 NLRB lll.)[11/]

[11/]The question in D. H. Farms, supra, was whether it was reasonable for employees who were laid off prior to the Direction of Election to expect recall by the date of the election. That determination turned on objective factors. Although the Employer contended that he did not expect to have work for them for another year, the NLRB found that the employees enjoyed a reasonable expectancy of recall. In so finding, the NLRB relied on the following facts: the employer's practice of keeping laid off employees on a recall list, employees were told at the time of layoff that there was a likelihood of recall, and nearly half of a larger group of previously laid off employees had in fact been recalled. The Board also found no evidence of a decline in sales or a phasing out of a line of production in which the subject employees had been involved and thus there was a strong probability that there would be work for them in the future.

Similarly, the NLRB has developed special voter eligibility rules for employees in clearly seasonal industries. First, the election must be held at or near peak employment. Next, eligible employees are those who are employed at any time during the payroll period immediately preceding issuance of the Notice of Election. (Kelly Brothers Nurseries, Inc. (1962) 140 NLRB 82.)[12/]

While section 1148 of our Act mandates that we follow "applicable" precedents of the NLRA, another section of our Act, namely the overall provisions contained in chapter 5, makes clear that reference to section 1148 alone cannot govern the eligibility of agricultural employees to participate in ALRA elections.

Unlike the NLRA, which is silent on the subject, the ALRA expressly sets forth precise eligibility requirement in this manner:

> All agricultural employees whose names appear on the payroll applicable to the payroll period immediately preceding the filing of the petition of such an election shall be eligible to vote.[13/]

[12/]See, also, cases involving irregular patterns of employment, e.g., Hondo Drilling Company (1967) 164 NLRB 416 [65 LRRM 1094]; American Zoetrope Products, Inc. (1973) 207 NLRB 621 [84 LRRM 14911. In situations where there is a short peak season, eligibility under the NLRA is accorded only those employees employed during the payroll period immediately preceding the election. (E.g., Fruitvale Canning Co. (1948) 78 NLRB 152 [22 LRRM 11811; Alaska Salmon Industry, Inc. (1948) 78 NLRB 522 [22 LRRM 1238] .)

[13/]Neither the statute nor the Board's regulations define a standard payroll period, adopting instead whatever payroll schedule the particular employer follows (i.e., weekly, bi-weekly, monthly, etc.) .

The statutory language quoted directly above was construed for the first time in Yoder Brothers, Inc. (1976) 2 ALRB No. 4 (Yoder). In that case, the names of nine employees did not appear on the relevant payroll although all performed some work for the employer during the controlling time period. The Board interpreted the phrase "whose names appear on the payroll" to mean employees who actually perform some work during the pertinent payroll period even though their names, for whatever reason, have been omitted from payroll rosters. The Board then determined that the names of six employees had been omitted due to clerical error and the names of three employees, all students, had been intentionally omitted by the employer due to his erroneous belief that they were temporary employees and thus not eligible. All were deemed eligible to vote because they had performed some work for the employer during the controlling pre-petition eligibility period. However, the Board found that two additional employees who had been terminated immediately prior to the start of the pre-petition period were not eligible because:

> . . . with the exception of eligible economic strikers, only those employees who are paid for the applicable payroll period are eligible to vote.
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> (Yoder Bros., supra, 2 ALRB No. 4, at p. 13.)

In footnote 10 of the Yoder Decision, the Board explained its strict adherence to the statutory language in this manner:

> While the NLRB permits voting by employees who are on unpaid leave if they are automatically to be restored to their duties when ready to resume work, or even by employees on layoff status if they have 'reasonable expectation of permanent employment,[1] (citation), the more restrictive language of Section 1157 appears to preclude those results. Presumably the Legislature

> considered that the typical impermanency of agricultural employment, as well as the necessity for speed in the conduct of elections and determination of the results, required a different definition of the electorate. Employees on paid vacation or paid sick leave during the applicable payroll period, however, would appear to meet the test of Section 1157. Similarly, employees who have been discriminatorily discharged and who are subsequently found to be entitled to back pay for the applicable payroll period would be eligible voters.

Thus, the Board ruled ineligible various individuals who were on unpaid sick leave, leaves of absence, and/or vacation even though their names did appear on a "master employee list."

One year later, in Rod McLellan Co., supra, 3 ALRB No. 6, the Board further interpreted and applied section 1157, this time to four employees whom the Regional Director found "did not work and did not receive any form of compensation" during the critical payroll period preceding the filing of the petition for certification. With respect to two of those employees, the Board applied the rule as enunciated in Yoder. Although "on call" and working for the employer as needed, they performed no actual work and were not compensated in any manner during the pre-petition period. Thus, consistent with Yoder, the Board concluded that they were absent because there was no work for them to do, hence "[tlhey are indistinguishable from seasonal employees who have not yet been hired for the harvest." With respect to the two remaining employees, however, the Board found the Yoder rule too sweeping and thus not applicable in that instance. As to them, the employer explained that they were "regular" employees who would have performed work and been paid but for the fact that one had been absent due to illness and the other was on vacation.

The Board held that even when an employee's name does not appear on the payroll, an employee nevertheless may be deemed eligible to vote in a representation election if the employee's absence from the payroll was occasioned by illness or vacation. The Board announced that it would look to the employee's work history, the pattern of benefit payments made on behalf of the employee and any other relevant evidence which could bear upon the question of whether or not the employee held a current job or position during the relevant payroll period. (See also, Mel-Pak Vineyards, Inc. (1980) 5 ALRB No. 61.)

Whether employees who performed no work during the pre-petition payroll period should be permitted to vote only because they had a reasonable expectation of employment was first addressed in Wine World, supra, 5 ALRB 41. The Investigative Hearing Examiner (IHE) found that five voters whose names did not appear, on the payroll because they had been laid off prior to the relevant payroll period nevertheless had a reasonable expectation of employment and therefore recommended that their challenged ballots be opened and counted. In so ruling, the IHE relied on NLRB precedents which hold that since a layoff is presumed to be temporary, employees on layoff status are eligible to vote if they have reasonable expectations of rehire. The Board did not affirm, nor expressly reject, the IHE but chose instead to resolve the issue on the basis of McLellan, thus finding that the employees in question were indistinguishable from seasonal employees not yet hired and therefore not eligible to vote. However, in dicta, the Board appeared to indicate that while it might be willing at

another time to entertain the "reasonable expectation of employment" concept sometimes utilized by the NLRB, it did not need to reach that question in Wine World.

Among the features which differentiate the ALRA from its federal counterpart are those which govern representation matters. Departures from the NLRA include a statutorily fixed showing of interest, a seven-day election rule, "wall-to-wall" and (generally) statewide bargaining units and, of particular interest here, specific voter eligibility criteria. We take note of the fact that those provisions which set the ALRA apart were drafted with knowledge of a long history of NLRB rulings affecting a wide range of eligibility questions. The clear language of section 1157 suggests that those precedents were rejected in favor of a single narrow rule which limits eligibility to those employees who in fact worked during the applicable payroll period or, as the rule was extended in McLellan, would have worked but for an absence due to illness or vacation. Indeed, since the NLRB's "reasonable expectation of employment" doctrine in seasonal industries predates the enactment of the ALRA, had the Legislature intended this Board to follow the NLRB in this regard, it could easily have adopted the NLRB's standard.[14/]

[14/] For example, the NLRA is silent on extensions of certification; they are solely the product of NLRB case law. Section 1155.2 of the ALRA, on the other hand, sets forth explicit standards and procedures for such extensions and is merely a codification of NLRB decisional precedents.

For the reasons discussed above, the Board continues to reject the "expectation" standard as a measure of eligibility.[15/] Accordingly, we affirm the Regional Director's finding that the challenged ballots of the 48 celery harvest employees be sustained on the grounds that they did not work during the governing payroll period because there was no work for them to do. Our finding includes three employees who not only were members of the celery crew discussed above, but who also were on approved leaves of absence during the eligibility period. Notwithstanding their leaves, they, like the other members of their crew, were indistinguishable from seasonal employees who had not resumed work because the harvest had not yet begun. (Rod McLellan, supra, 3 ALRB 6.)[16/] Thus, even if they had not been on authorized leaves, they would not have worked immediately prior to the election simply because there would have been no work for them to do.

Francisco Ramirez and Jose Rodriquez

There is no dispute as to Mr. Ramirez's eligibility to vote. The problem, according to the Regional Director, is that he voted twice, first at the Colonia Ranch where he voted a challenged ballot because his name could not be found on the eligibility roster for that polling site and again by regular

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[15/] No exceptions were filed to the Regional Director's findings concerning employees who would have worked during the eligibility period but for absence due to illness. Therefore, it is not necessary in this case to discuss the McLellan exceptions to section 1157 in those narrow circumstances.

[16/] They are Delfino Diaz Ochoa, Raul Pasillas and Porfiro Sanchez Ortiz.

ballot at the El Rio site where he was listed. The Regional Director concedes that there are two employees by the same name and that both were eligible to vote but believes that one of them did not vote at all. The UFW contends that the name Francisco Ramirez appears on both eligibility rosters and that each Ramirez voted once and at his appropriate polling place. On the basis of a declaration submitted by one Francisco Ramirez in which he asserts that he cast a single ballot at the El Rio site, the UFW argues that the challenged ballot must be that of the other Francisco Ramirez and therefore should be opened and counted.

Mr. Rodriquez's name appears on the Regional Director's list of celery harvest employees whose challenges he would sustain because there was no work for them during the eligibility period. He did not single out Mr. Rodriquez. The UFW excepts to the inclusion of Mr. Rodriquez among the celery harvest employees on the basis of a declaration submitted to the Board in which Mr. Rodriquez states that he has worked for the Employer since 1982, that he worked the entire week of the pre-petition eligibility period, and that he continued to work until November 8, but not the week following due to illness.

The UFW has raised material factual issues concerning the Regional Director's treatment of the challenges to the ballots cast by Ramirez and Rodriquez. Those issues would ordinarily warrant further investigation by the Regional Director or a hearing if the investigation failed to resolve them.

In this case, however, further proceedings will be necessary to resolve those questions only if those ballots must be

counted in order to determine whether a runoff election is required by section 1157.2.[17/]

On the basis of the 7 challenged ballots which we herein direct the Regional Director to open and count., but independent of the ballots of Ramirez and Rodriquez and excluding the 2 void ballots, the total vote now stands as follows:

Comite	68
UFW	54
No Union	6
Challenged Ballots to be Opened and Counted	7
TOTAL	135

(68 votes constitute a majority)

If only one or both of the remaining challenged ballot of either Ramirez or Rodriquez ultimately is overruled, a minimum of 69 votes would be required to constitute a majority of the valid votes cast. Should any party receive at least 69 votes after the 7 ballots are opened and counted, the ballots of Ramirez and Rodriquez need not be resolved.

The Regional Director is hereby directed to open and count the seven ballots with respect to which he recommended,

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[17/]Section 1157.2 provides as follows:

> In any election where none of the choices on the ballot receives a majority, a runoff shall be conducted, the ballot providing for a selection between the two choices receiving the largest and the second largest number of valid votes cast in the election.

A runoff election is in effect a rerun of the prior election, but with only two rather than the original three parties appearing on the ballot.

without exception by any party, that the challenges be overruled, and thereafter to prepare and serve upon the parties a revised Tally of Ballots. If the election remains unresolved, the Regional Director shall conduct such further investigation as is necessary to resolve the challenges to the ballots of Francisco Ramirez and Jose Rodriquez and shall prepare a Supplemental Report on Challenged Ballots setting forth his or her findings and recommendations.[18/]

DATED: October 21, 1987 BEN

DAVIDIAN, Chairman PATRICK W.

HENNING, Member GREGORY L.

GONOT, Member

[18/] Only the UFW has filed objections to the election. Those objections are currently pending review by the Board and are within the sole province of the Board to determine. Thus, we do not rely on the Regional Director's report on Challenged Ballots insofar as it may appear that he made a finding as to the objection concerning whether the Employer affected the results of the election by delaying the date of recall of the celery harvest workers.

CASE SUMMARY

Hiji Brothers, Inc.
& Seaview Growers, Inc.
(UPW)

13 ALRB No. 16
Case No. 86-RD-8-SAL(OX)

BACKGROUND

On November 4, 1986, rival union Comite 83, Sindicato de Trabajadores Campesinos (Comite) filed a petition for certification in which it sought to replace the incumbent United Farm Workers of America, AFL-CIO (UFW) as the exclusive bargaining representative of all agricultural employees of the Employer in the State of California. Although there were only 158 names on the eligibility list, a total of 197 employees cast ballots in the election. Sixty-nine of those ballots were challenged by Board agents on the grounds that they were cast by employees who did not work during the relevant pre-petition payroll eligibility period. There were two void ballots. The remaining ballots were cast for the Comite (68), the UFW (54) and no Union (6).

REGIONAL DIRECTOR'S REPORT ON CHALLENGED BALLOTS

Since the challenged ballots were sufficient in number to have affected the results of the election, the Regional Director conducted an investigation and recommended that 62 of the challenges be sustained but that seven of them be overruled. The UFW thereafter timely filed exceptions to 50 of the challenged ballots which the Regional Director would sustain. The UFW also filed exceptions to the conduct of the election or conduct affecting the results of the election which are currently pending before the Board.

BOARD DECISION

Since no party excepted to the Regional Director's recommendation that 7 of the ballots be overruled, or to his recommendation that 12 of the ballots be sustained, the Board adopted those recommendations pro forma. As to 48 of the challenged ballots which were cast by laid off celery harvest employees who were recalled to work but not until after closure of the eligibility period, the Board rejected the UFW's contention that the Board follow NLRB precedents which accord eligibility to seasonal employees who can demonstrate that they have a reasonable expectation of employment. The Board acknowledged those precedents but concluded that eligibility had been narrowly and expressely construed by the Legislature which granted eligibility only to those employees who in fact performed some service for the Employer during the payroll period immediately preceding the filing of the representation petition. On that basis, the Board sustained the challenges to the 48 celery harvest employees.

With respect to the challenged ballots of the two remaining employees/ the Board found that the UFW had presented evidence which raised a material factual question as to their eligibility and that further investigation or a hearing was required as to them. However, the Board conditioned such further investigation on the condition that either one or both of those ballots prove outcome determinative as to whether a runoff election would be required. In the initial election, no party received a majority of the valid votes cast. Thus, after the Regional Director opens and counts the seven challenged ballots to which no exceptions were filed, and issues a Revised Tally of Ballots, and it appears that no party has received a majority, the two ballots will become determinative. In that event, the Regional Director will investigate the two challenged ballots and will thereafter issue a Supplemental Report on Challenged Ballots to which any party may file appropriate exceptions.

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

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