

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SEQUOIA ORANGE CO . , EXETER	)	
ORANGE CO . , SEQUOIA ENTERPRISES,	)	
CARL A. PESCOLIDLO, JR., MARVIN L.	)	Case Nos. 83-RC-4-D
WILSON, OLEAH H. WILSON, LINDA	)	83-RC-4-1-D
PESCOLIDLO, WILLIAM PESCOLIDLO,	)	
WILLIAM L. MARTIN II, RICHARD B.	)	
VIND, BADGER FARMING COMPANY,	)	
WILSON & WILSON, RICHARD J.	)	
PESCOLIDLO, and DOES A-K , doing	)	
business as FOOTHILL FARMS,	)	
TROPICANA RANCH, VALLEY VIEW RANCH,	)	
SEQUOIA DEHYDRATOR/WEAVER,	)	
ENTERPRISE I, ENTERPRISE II, NORTH	)	
SLOPE RANCH, ROLLING' HILLS RANCH,	)	
CAP RANCH, COUNTY LINE RANCH,	)	
HIATT RANCH, TEE DEE RANCH, JMW	)	
RANCH, KERN/CAMEO RANCH, PRICKETT	)	
RANCH, BURCH RANCH, MADERA 240	)	
RANCH, MERRYMAN RANCH, OSO RANCH,	)	
and PANOCHÉ RANCH, a single	)	
agricultural employer,	)	
	)	
Employer,	)	13 ALRB No. 9
	)	(11 ALRB No. 21)
and	)	
	)	
UNITED FARM WORKERS OF	)	
AMERICA, AFL-CIO,	)	
	)	
	)	
Petitioner.	)	

DECISION AND ORDER ON CHALLENGED BALLOTS

On September 17, 1985, the Agricultural Labor Relations Board (ALRB or Board) issued a Decision and Order in this proceeding directing the Regional Director (RD) to issue a Challenged Ballot Report resolving the outcome determinative challenged ballots. (Sequoia Orange Co., et al . (1985) 11 ALRB No. 21.) That report is now before the Board for review.

The Board has considered the RD's Amended Challenged

Ballot Report in light of the exceptions and supporting brief filed by the Employer<sup>1/</sup> and has decided to adopt the RD's recommendations as modified below.

On March 14, 1983,<sup>2/</sup> the United Farm Workers of America, AFL-CIO (UFW or Union), petitioned for an election among all the agricultural employees of two citrus packing houses, Sequoia Orange Company and Exeter Orange Company. The petition was amended to include all the agricultural employees of growers who pack into the above sheds as well as certain other related persons and entities.

On March 22, an election was conducted and the following result was obtained:

UFW . . . . .	198
No Union . . . . .	74
Unresolved Challenged Ballots . . . . .	279 <sup>3/</sup>
Void Ballots . . . . .	<u>8</u>
Total. . . . .	559

On June 9, the Executive Secretary of the ALRB set various election objections for hearing. On May 10, an unfair labor practice complaint issued against the Employer alleging certain unlawful conduct. This complaint was consolidated for

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<sup>1/</sup>At the objections hearing, the parties entered into a stipulation that the employing entities constituted a single, integrated employer. The exceptions and supporting brief were filed by certain "designated employers." The remaining employing entities have filed no exceptions and therefore are deemed to have accepted the RD's Challenged Ballot Report.

<sup>2/</sup> Unless otherwise stated, all dates are 1983.

<sup>3/</sup>This total includes the ballots of 165 packing shed employees.

hearing with the election objections. A hearing was held before Administrative Law Judge (ALJ) Matthew Goldberg on November 30, 1983 through December 6, 1983 and April 23, 1984 through April 27, 1984. The ALJ issued his Decision on both the election objections and unfair labor practice complaint allegations on October 31, 1984.<sup>4/</sup>

In its Decision and Order in Sequoia Orange Co., et al., supra, 11 ALRB No. 21, the Board agreed with the ALJ's rulings, findings and conclusions and held that the packing shed employees were agricultural employees and hence eligible voters. The Board directed the RD to open and tally the challenged ballots cast by the packing shed employees and issue a new amended tally. The Board further agreed with the ALJ that the three harvesting organizations employed by the packing sheds were labor contractors and therefore dismissed the election objections regarding those employees. (Labor Code § 1140.4(c).) The Board did not decide the effect on the election of the failure to notify Curtis Contracting employees and directed that, following the issuance of a revised tally, including the packing shed employees, the RD would, in the event the remaining challenged ballots were outcome determinative, issue a Challenged Ballot Report resolving the challenges as to all outstanding challenged ballots. Upon the

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<sup>4/</sup>with regard to the unfair labor practices found by the ALJ, the Board affirmed his rulings, findings and conclusions. The Employer filed a Petition for Writ of Review in the California Court of Appeal for the Fifth Appellate District, which was summarily denied on July 3, 1986. Therefore, the Board's decision regarding the unfair labor practices is final, as is the Board's determination that the employing entities constitute a single employer.

issuance of the RD's report resolving the challenges, the Employer filed exceptions pursuant to Title 8, California Administrative Code, section 20363(b) and addressed the question of the effect on the election of inadequate notice to Curtis Contracting employees.

Pursuant to the Board's Decision and Order in Sequoia Orange Co., et al.<sup>r</sup> supra, 11 ALRB No. 21, the RD opened and counted the packing shed employees ballots and issued an Amended Tally of Ballots with the following result:

	<u>3/22/83</u> + <u>1/17/86</u>	<u>Total</u>
UFW . . . . .	198	14
No Union. . . . .	74	110
Unresolved Challenged Ballots	<u>114</u>	<u>3</u>
Total . . . . .	386	127
Number of Void Ballots . . . . .	<u>8</u>	<u>10</u>
Total Number of Voters . . . . .	394	137
Number of Names on Eligibility List. . . . .	596	829 <sup>6/</sup>

Because the unresolved challenged ballots were outcome determinative, the RD investigated the challenges and issued an Amended Challenged Ballot Report on October 29, 1986.

In his report, the RD recommended that: (1) the

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<sup>5/</sup>The number of unresolved challenged ballots increased by three over the original tally of ballots because the Region did not open and count the votes cast by three persons whose names were not listed on the Challenged Ballot List. The names were listed on the challenge envelopes, but the Region failed to record them on the list.

<sup>6/</sup> This figure includes the packing shed employees.

challenges to 37 voters be sustained; (2) the challenges to 35 voters be overruled; (3) the challenges to three voters be overruled if they worked in the packing shed during the pertinent payroll period and were not challenged for reasons other than being packing shed employees; and (4) the challenges to 42 voters be placed in abeyance, and if outcome determinative, be set for hearing.<sup>7/</sup>

While excepting to each of the RD's findings, the Employer has submitted only a one-paragraph general declaration to support its exceptions. For the purpose of determining the sufficiency of exceptions, the Board's regulations provide that exceptions shall be accompanied by declarations and other documentary evidence in support of the exceptions. Contrary to the regulations, the Employer's exceptions are not supported by any documentary evidence. (See Cal. Admin. Code, tit. 8, § 20363(b).) The declaration submitted fails to raise any material questions of fact or law to contradict the RD's findings. This unsupported declaration and the Employer's conclusory statements in its brief are insufficient to rebut the RD's recommendations. (Farmer John Egg Enterprises, Inc. (1984) 10 ALRB No. 15; Mayfair Packing Company (1983) 9 ALRB No. 66; Miranda Mushroom Farm, Inc. (1980) 6 ALRB No. 22.) Without evidence containing specific assertions, the Employer's exceptions fail to raise a material issue of fact or law, and consequently

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<sup>7/</sup>Appendices A, B, and C reflect the names of the voters whose challenged ballots were overruled, sustained or placed in abeyance by the RD in his Challenged Ballot Report.

provide no reason for overturning the RD's report. (See D'Arrigo Bros. of California (1977) 3 ALRB No. 37; George Lucas & Sons (1977) 3 ALRB No. 5; Sam Andrews' Sons (1976) 2 ALRB No. 28.)

We therefore adopt the RD's recommendations that 37 challenges be sustained and 35 challenges be overruled. We shall retain jurisdiction over the remaining 45 challenges and RD's recommendations in the Amended Challenged Ballot Report. The remaining challenges will be resolved pursuant to an Order to Show Cause which we issue with this Decision and Order. Upon resolution of the challenges, we will decide the effect, if any, of the inadequate notice to Curtis Contracting employees.

ORDER

The challenges to the 35 ballots which the RD recommended be overruled are hereby overruled. (See attached Appendix A.) The RD is directed to open the 35 challenged ballots and thereafter prepare and serve upon the parties a revised Tally of Ballots.

The challenges to the 37 ballots which the RD recommended be sustained are hereby sustained. (See attached Appendix B.)

Dated: May 15, 1987

JOHN P. MCCARTHY, Member<sup>8/</sup>

PATRICK W. HENNING, Member

GREGORY L. GONOT, Member

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<sup>8/</sup> 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. Chairman Ben Davidian and Member Ivonne Ramos Richardson did not participate in the consideration of this case.

APPENDIX A

Challenges to be Overruled:

- |                          |                         |
|--------------------------|-------------------------|
| 1. Jose M. Gonzalez      | 19. Roque Aguilar       |
| 2. Magdaleno Mata        | 20. Jose Mario Garcia   |
| 3. Julia Mata            | 21. Robert Ramos        |
| 4. Eatella Mata          | 22. Juvencio Ramos, Jr. |
| 5. David A. Agras        | 23. George Ramos        |
| 6. Agustin Santoyo       | 24. Maria E. Sanchez    |
| 7. Luis Arias            | 25. Raymond Gomez       |
| 8. Carlos M. Ruiz        | 26. Silvia Salazar      |
| 9. Isidore Enciso        | 27. Vidal Becerra       |
| 10. Guadalupe Ruiz       | 28. Nicholas Chavez     |
| 11. Jose Regino Ochoa    | 29. Alfredo Martinez    |
| 12. Raul Mata            | 30. Rutilio Hernandez   |
| 13. Jessie H. Palomino   | 31. Filemon Rodriguez   |
| 14. Maria Jesus Carbajal | 32. Bertha Ramirez      |
| 15. Vicente Cisneros     | 33. Delia Sandoval      |
| 16. Magdalena Hernandez  | 34. Jose Avalos         |
| 17. Maria Hernandez      | 35. Maria Avalos        |
| 18. Sara Moreno Sanchez  |                         |

APPENDIX A

APPENDIX B

Challenges to be sustained:

1. Victor Vega
2. Porfirio Molina Gaitan
3. Manuel Perez
4. Celerino Medina
5. Luis Meza
6. Jose Luis Hernandez
7. Felipe Ruiz
8. Vicente Lopez
9. Leonardo Pilar
10. Rebecca Ramirez
11. Jose Pilar
12. Rafael Molina
13. Natalio Pilar
14. Salvador Torres
15. Fernando Renteria
16. Elias Torres
17. Gilberto Hernandez
18. Ramon Medel
19. Adelita S. Esquivel
20. Jorge Bautista Aguilar
21. Agustin Vega
22. Felipe Chavez Lopez
23. Elvia Gonzalez
24. Francisco Meza
25. Admundo Garcia
26. Isidro Parra
27. Manuel Alcantar
28. Miguel Cuentas
29. Victorino Flores
30. Carlos Gonzalez Lara
31. Jose Luis Gonzalez
32. Jose Rodriguez
33. Roberto Figueroa
34. Anita Rodriguez
35. Jaime Quesada
36. Leonardo Cortez
37. Josefina Nunez

APPENDIX B

APPENDIX C

Challenges to be Placed in Abeyance:

1. Felipe Sanchez
2. Armando Cervantez
3. Salvador Cisneros
4. Francisca Nieto
5. Osvaldo Velasco
6. Alejandro Renteria
7. Jesus Toledo
8. Eduardo Jimenez
9. Mario Garcia
10. Lorenzo Rodriguez
11. Antonio Hernandez
12. Jesus Mata
13. Agustin Rojas
14. Rafael Vasquez
15. Isidro Cortez
16. Martin Rodriguez
17. Eugenio Chavez
18. Jose Agras
19. Daniel Cisneros
20. Bulmaro Lopez
21. Clemente Chavez
22. Chano Sanchez
23. Angel Diaz
24. Eusebio Rodriguez
25. Eloy Calderon
26. Antonio Esquivel
27. Jose Arias
28. Pedro Vega
29. Isaac Vasquez
30. Edmundo Corralas
31. Rodolfo Rodriguez
32. Trinidad Chavez
33. Dolores Vega
34. Jacobo Rodriguez
35. Salomon Soto
36. Nicholas Abalos
37. Ruben Chavez
38. Inez Chavez
39. Avelardo Gonzalez
40. Jesus Reyna
41. Moises Malagon
42. Guadalupe Prado

APPENDIX C

CASE SUMMARY

Sequoia Orange Co., et al.  
(UFW)

Case Nos. 83-RC-4-D, et al 13  
ALRB No. 9

REGIONAL DIRECTOR'S REPORT

Pursuant to the Board's directive in this proceeding (11 ALRB No. 21), the Regional Director (RD) issued an Amended Tally of Ballots including the packing shed employees ballots. Since the number of unresolved challenged ballots was sufficient to determine the outcome of the election, the RD conducted an investigation of the 117 unresolved challenges and submitted a Challenged Ballot Report.

In his report, the RD recommended that: (1) the challenges to 37 voters be sustained; (2) the challenges to 35 voters be overruled; (3) the challenges to three voters be overruled if they worked in the packing shed during the pertinent payroll period and were not challenged for reasons other than being packing shed employees; and (4) the challenges to 42 voters be placed in abeyance, and if outcome determinative, be set for hearing.

BOARD DECISION

The Employer filed exceptions to each of the RD's recommendations. The Board decided to adopt the RD's recommendations that 37 challenges be sustained and 35 challenges be overruled. The Board retained jurisdiction over the remaining 45 challenges and issued an Order to Show Cause to resolve these challenges and any discrepancy regarding the number of packing shed employees ballots. Upon resolution of the challenges and discrepancy, the Board will decide the effect, if any, of inadequate notice to Curtis Contracting employees.

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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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