

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

CAPCO MANAGEMENT GROUP)	
INCORPORATED,)	Case No. 88-RC-8-VI
)	
Employer)	
)	
and)	
)	15 ALRB No. 13
LOCAL 1245, INTERNATIONAL)	
BROTHERHOOD OF ELECTRICAL)	
WORKERS, AFL-CIO,)	
)	
Petitioner.)	

DECISION AND ORDER ON CHALLENGED BALLOTS

Following the filing of a Petition for Certification by Local 1245, International Brotherhood of Electrical Workers, AFL-CIO (IBEW or Union) on December 15, 1988, the Visalia Regional Director conducted a secret ballot election among the agricultural employees of CAPCO Management Group Incorporated (Employer) on December 22, 1988. The Official Tally of Ballots revealed the following results:

IBEW	9
No Union	12
Challenged Ballots	11
Total	32
Void ballots	1

As the challenged ballots were sufficient in number to affect the outcome of the election, the Regional Director commenced an investigation of the eligibility of the challenged voters, pursuant to Title 8, California Code of Regulations

(hereinafter "regulations"), section 20363(a), during which the Employer and the Union were requested to provide their positions on the issue. In its response, the Union unilaterally withdrew its challenges, whereupon the Regional Director, in his Report on Challenged Ballots issued on January 24, 1989, recommended all challenged ballots be opened and counted.

Thereafter, the Employer timely filed exceptions to the Regional Director's recommendation contending that his acceptance of the Union's unilateral withdrawal of its challenges several weeks after the Official Tally of Ballots allows the Union to misuse the administrative processes of this Agency by which the integrity of the challenged ballots is compromised.

The Agricultural Labor Relations Board (ALRB or Board) has reviewed the Regional Director's Challenged Ballot Report in light of the Employer's exceptions and supporting brief and declaration, and has decided to affirm the recommendation of the Regional Director to the extent consistent herewith.

Regulation section 20363(b) mandates finality of the regional director's conclusions and recommendations as set forth in a challenged ballot report unless exceptions thereto are timely filed. Where the parties fail to raise in their exceptions a material factual dispute which would warrant further investigation or hearing (see Cossa & Sons (1977) 3 ALRB No. 12), or where the employer's conclusory statements in its brief filed in support of its exceptions are not supported by declarations or documentary evidence (see Sequoia Orange Co. (1987) 13 ALRB No. 9 and Bunden Nursery, Inc. (1988) 14 ALRB No. 18), the Board shall be entitled

to rely on the challenged ballot report.

The Employer in the instant matter does not take exception to factual findings by the Regional Director as none were made, but rather, contests his interpretation and application of the Board's challenged ballot procedures as set forth in regulation sections 20355 through 20363. We fail to find, however, any abuse of discretion by the Regional Director. We note that an investigation was properly conducted in accordance with our regulations, and the parties were granted the opportunity to participate. We also find it significant that the Employer, as well as the Union, no longer contests the eligibility of the challenged voters,^{1/} leaving the Regional Director without an issue to investigate.

The primary purpose of the Board's challenged ballot procedures is to provide a method by which the parties or a Board agent may challenge a prospective voter's eligibility while still permitting the voter to cast a ballot, all without disrupting the normal voting process. When the eligibility of a challenged voter is no longer contested, the Board's challenged ballot procedures no longer apply, and as neither party in the instant case contests the eligibility of any of the 11 challenged voters, it was proper for the Regional Director to recommend that the ballots be opened and counted. To do otherwise would result in the disenfranchisement of 11 voters who are presumptively eligible and entitled to vote under the Agricultural Labor Relations Act (ALRA

^{1/} The Employer does not contest the challenges for purposes of expediting certification of the election results.

or Act). (See Rod McLellan Company (1978) 4 ALRB No. 22.)

Notwithstanding our holding herein, we are concerned about the potential for use of our challenged ballot procedures as a means of manipulating election results. We recognize that the regulations are silent as to the proper disposition of a challenged ballot when withdrawn after a tally of ballots, as opposed to a withdrawal made prior to the tally of ballots (see regulation § 20355(d), under which the Board agent supervising the election has the discretion to accept withdrawals made by the challenging party), but find that the limited set of facts in the matter before us fails to support a finding that the Regional Director abused his discretion under the Act or the Board's regulations, or that the Union's challenges were made in bad faith or without substantial justification.^{2/}

We conclude therefore that since the 11 challenged ballots have been withdrawn, they should be opened and counted.

ORDER

In accordance with our Decision herein, the Regional Director is directed to open and count the ballots of Joe Maguire, Claud Grove, Douglas Gene Melikian, Thomas John Huelskamp, Donna Piedrafita, Ruben Michael Arellano, Alvin Eugene Singletary, Mary Jane Bagwell, Karen Jane Curutchet, Scott Richmond and Linda Weaver, and thereafter to prepare and serve upon the parties and the Board a Revised Official Tally of Ballots.
The Executive

^{2/} On the basis of facts not available here, or, more appropriately, in the context of a regulatory hearing, the Board will be in the position to further address the issue raised by the Employer.

Secretary, upon his receipt of the Revised Official Tally of Ballots, is hereby directed to certify the results of the election since no objections to the election are pending.

DATED: September 19, 1989

GREGORY L. GONOT, Acting Chairman^{3/}

IVONNE RAMOS RICHARDSON, Member

JIM ELLIS, Member

^{3/} 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. There are currently two vacancies on the Board.

CASE SUMMARY

CAPCO Management Group Inc.,
IBEW

15 ALRB No. 13
Case No. 88-RC-8-VI

Background

On December 22, 1988, pursuant to a Petition for Certification filed by Local 1245, International Brotherhood of Electrical Workers, AFL-CIO (IBEW or Union), the Agricultural Labor Relations Board (ALRB or Board) conducted a representation election among all agricultural employees of CAPCO Management Group Incorporated (Employer). The Official Tally of Ballots revealed 9 votes for the Union, 12 for No Union, and 11 Unresolved Challenged Ballots. As the latter were sufficient in number to determine the outcome of the election, the Regional Director (RD) of the Board's Visalia Regional Office commenced an administrative investigation, during which the Employer and the Union were requested to provide their positions on the challenged ballots. In its response, the Union unilaterally withdrew its 11 challenges, whereupon the RD, in his Report on Challenged Ballots issued on January 24, 1989, recommended the ballots be opened and counted. The Employer filed exceptions to the RD's recommendation contending that his acceptance of the Union's unilateral withdrawal of its challenges several weeks after the Official Tally of Ballots allows the Union to misuse the administrative processes of this Agency by which the integrity of the challenged ballots is compromised.

Board Decision

The Board reviewed the RD's Challenged Ballot Report in light of the Employer's exceptions and supporting brief and declaration, and has decided to affirm the recommendation of the RD. The Board noted that the Employer does not take exception to factual findings by the RD as none were made, but rather, contests his interpretation and application of the Board's challenged ballot procedures as set forth in Title 8, California Code of Regulations, sections 20355 through 20363. The Board found that the Employer, as well as the Union, no longer contests the eligibility of the challenged voters, leaving the RD without an issue to investigate. When the eligibility of a challenged voter is no longer contested, the Board's challenged ballot procedures no longer apply, and as neither party contests the eligibility of any of the challenged voters, it was proper for the RD to recommend that the ballots be opened and counted. To do otherwise would result in the disenfranchisement of 11 voters who are presumptively eligible and entitled to vote.

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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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