

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

GERAWAN RANCHES,)	
)	
Employer,)	Case No. 90-RC-2-VI
)	
and)	
)	
INDEPENDENT UNION OF)	16 ALRB No. 8
AGRICULTURAL WORKERS,)	
INTERNATIONAL BROTHERHOOD OF)	
PAINTERS AND ALLIED TRADES,)	
AFL-CIO,)	
)	
Petitioner,)	
)	
UNITED FARM WORKERS OF AMERICA,)	
AFL-CIO,)	
)	
Intervenor.)	
)	

DECISION AND ORDER ON CHALLENGED BALLOTS

A Petition for Certification of a bargaining unit consisting of all the agricultural employees of Gerawan Ranches (Employer) in the State of California was filed by the Independent Union of Agricultural Workers, International Brotherhood of Painters and Allied Trades, AFL-CIO (IUAW) on May 2, 1990, with the Visalia Regional Office of the Agricultural Labor Relations Board (ALRB or Board). Thereafter on May 7, 1990, a Petition in Intervention was filed by the United Farm Workers of America, AFL-CIO (UFW or Union). A secret ballot election was conducted by the Regional Director of the Visalia Region on May 9, 1990, the results of which were as follows:

IUAW	173
UFW	448
No Union	552
Challenged Ballots . . .	<u>158</u>
Total	1331

Since the number of unresolved challenged ballots was sufficient to affect the outcome of the election, the Regional Director conducted the investigation mandated by the Board's regulations, and issued a revised Tally of Ballots on May 11, 1990, which showed the following outcome:

IUAW	178
UFW	479
No Union	581
Challenged Ballots . . .	<u>55</u>
Total	1293

As the number of challenged ballots then remaining was insufficient to affect the outcome of the election, and none of the choices achieved a majority of valid ballots, the Regional Director, pursuant to Title 8, California Code of Regulations, section 20375, announced a run-off election on May 14, 1990, to be held the following day among the top two choices, UFW and No Union. The initial Tally of Ballots in the run-off election produced the following totals:

UFW	536
No Union	374
Challenged Ballots . . .	<u>211</u>
Total	1121

Since this outcome once again indicated that the challenged ballots were determinative of the winner of the election, the Regional Director conducted an investigation into the eligibility of these challenged voters, and issued the attached Challenged Ballot Report on Run-off Election (Report) on May 23, 1990. Therein he recommended that the Board overrule the challenges to 66 ballots cast by voters whose names did not appear on eligibility lists maintained at their polling places, or for whom no lists were maintained at the polling sites. The Regional Director found that the names of all these individuals appeared on either the Employer's master list or on lists of crews provided by the Employer or labor contractors. The Employer did not except to this recommendation. We therefore adopt pro forma his recommendation as to these ballots. (Salinas Valley Nursery (1989) 15 ALRB No. 4.)

The Regional Director also recommended that the challenges be sustained as to 43 ballots cast by voters whose names did not appear on any eligibility lists, and who executed sworn declarations under penalty of perjury that they had not worked for the Employer in the applicable eligibility period, April 22, 1990, through April 28, 1990. The Regional Director determined that the Board's regulations and Election Manual make clear that only those persons who were eligible to vote in the original election can vote in the subsequent run-off election.^{1/}

^{1/}Title 8, California Code of Regulations, section 20375(a) provides, in pertinent part: "All persons eligible to vote in the initial election shall be eligible to vote in the run-off

(fn. 1 cont. on p. 4.)

The Regional Director also distinguished the instant matter from ALRB and NLRB precedent allowing the use of a later, more representative eligibility period for a run-off election when substantial time has passed since the original election, and substantial employee turnover has occurred in that time. The Regional Director found the 6 days between the original and run-off elections not to be a substantial period of time. The Employer excepts to the recommendation of the Regional Director that the challenges to these 43 ballots be sustained.^{2/}

The Board has reviewed the Regional Director's Challenged Ballot Report on Run-off Election in light of the Employer's exception and supporting brief, and has decided to affirm his recommendation as explained further herein.

Employer's Exception

The Employer first argues that the ballots whose

(fn. 1 cont.)

election." Election Manual section 2-9300 provides, in pertinent part: "[Only those employees eligible to vote in the first election may vote in the run-off." The corresponding provisions of the regulations and election manual of the National Labor Relations Board (NLRB or national board) are essentially identical. (See NLRB Rules and Regulations § 102.70(b) and Election Manual § 11350.5.)

^{2/}The Employer gives no indication why it excepts to the Regional Director's recommendation as to only 40 of the 43 challenged ballots. The decision which we reach herein obviates the need for further inquiry on this point. We also note that the Regional Director's Report gives no indication of his disposition of the remaining 102 challenged ballots. While our Regional Directors have discretion, in order to expedite the election process, to limit the number of challenged ballots subject to investigation to a number that appears large enough to result in a clear majority when added to the ballots received by any one of the choices, we expect our Regional Directors to investigate as many challenged ballots as practicable in the first instance.

challenges the Regional Director recommended we sustain should be opened and counted because the voters who cast these ballots had either worked for the Employer previous to the eligibility period, and/or had worked a substantial number of days between the end of the eligibility period and the run-off election. The Employer offers no precedent in support of this contention, and we reject it. The suggestion that the Board should deem as eligible voters who have not worked in the applicable eligibility period directly contradicts our statutory mandate and would involve our regional staffs in a labyrinth of individualized eligibility determinations clearly inconsistent with the Agricultural Labor Relations Act (ALRA or Act).^{3/}

The Employer also contends that these ballots should be counted because, despite the language of the Act, our regulations do not indicate that eligibility for a run-off election is controlled by the eligibility determination for the original election. We reject this argument also. While the regulatory language relied on by the Employer is capable of such an interpretation if read in isolation, we decline to read it in that fashion. Such an interpretation is clearly at odds with the statutory provisions indicated above that determine voter eligibility. Our Election Manual states that, in the absence of specified extraordinary circumstances, eligibility for a run-off election is controlled by the same eligibility period used for the original election:

^{3/} See e.g., Labor Code sections 1156.3(a)(1), 1156.4, and 1157.

In any of the above circumstances [necessitating a run-off election], only those employees eligible to vote in the first election may vote in the run-off. However, because of a long period of time between the original election and a subsequent run-off election and the likelihood of substantial employee turn-over since the original election, the Board has directed that those eligible to vote in the run-off will also be the employees on the payroll for the pay period immediately preceding the date of issuance of notice of the run-off election. (Election Manual section 2-9300.)

Our practice in this instance is also consistent with that of the NLRB.^{4/} Thus, when our regulatory language is read properly in context with the controlling statutory provisions and interpretive instructions in our Election Manual, the error in the Employer's interpretation of that language is evident.

Finally, the Employer argues that extraordinary circumstances are present in this matter. Relying on Jack T. Baillie Company, Inc. (1978) 4 ALRB No. 47, Mel-Pak Vineyards, Inc. (1979) 5 ALRB No. 32, and Interlake Steamship Co. (1969) 178 NLRB 128 [72 LRRM 1008], the Employer asserts that, due to the passage of time since the original election and the substantial employee turnover within that same period, the Board should set as the eligibility period for the run-off election the two and one-half week period between the end of the original eligibility

^{4/}NLRB Rules and Regulations section 102.70(b) provides: "Employees who were eligible in the [original] election and who are in an eligible category on the date of the run-off election shall be eligible to vote in the run-off election." This language is also capable of the interpretation advocated by the Employer for our similar regulatory language. However, NLRB Election Manual section 11350.5 states: "No one who was not eligible to vote in the original election can be eligible to vote in the run-off election."

period and the run-off election itself, i.e., April 29, 1990 through May 15, 1990. This eligibility period would include those workers whose challenged ballots the Regional Director reconunended that we sustain. Serious problems, however, stand in the way of our being persuaded by the Employer's contentions.

First, no precedent supports an eligibility period of the character desired by the Employer. As Jack T. Baillie, supra, our first case dealing with an altered eligibility period in a run-off election situation, states the rule,

In NLRB run-off elections, the same eligibility period and list used in the first election are generally used in a subsequent run-off election. However, exceptions have been made where a substantial period of time has passed since the first election; in such cases, the national [bloard has set the eligibility period as the payroll period immediately preceding the date of issuance of the notice of the run-off election.

(Id. at pp. 3-4, citing Interlake Steamship Co., supra, and Caribe General Electric, Inc. (1969) 175 NLRB 773 [71 LRRM 1061]; emphasis added.) Since the direction of the run-off election issued on May 14, 1990, as noted above, the applicable payroll period under Interlake and Jack T. Baillie would be that of May 6, 1990 through May 12, 1990, not the two and one-half week period between the end of the original eligibility period and the run-off election.

Moreover, even if the eligibility period desired by the Employer were supported by our own precedent or applicable precedent under the National Labor Relations Act (NLRA or national act), the Employer here does not satisfy the predicates for the invocation of an altered eligibility period. The 6 days intervening between the original and run-off elections simply do not

constitute a substantial period of time.^{5/} The Employer candidly admits as much, but asserts that the passage of time is not the significant consideration. Rather, in the Employer's estimation, substantiality of employee turnover is the controlling factor. Yet that factor does not support the Employer either. The percentage of those voting in the run-off election consisting of employees who worked in the eligibility period as sought by the Employer and who did not work in the eligibility period for the original election, expressed as a fraction of the employees who actually worked in the original eligibility period, is only 18.4% (362/1969). We do not consider such a percentage to be substantial turnover.^{6/}

^{5/}Nor could they be considered such under the case law. Cf. Baillie, *supra*, (8i months), Mel-Pak, *supra*, (23 months), Interlake, *supra*, (26 months), Caribe General Electric, *supra*, (19 months), and Hartz Mountin Corp. (1982) 260 NLRB 323 [109 LRRM 1204] (34 months). The NLRB has also found specific periods of time insufficient. Cf. Piper Industries, Inc. (1974) 212 NLRB 474 [87 LRRM 1277] (2 3/4 months), Lane Aviation Corp. (1975) 221 NLRB 898 [91 LRRM 1012] (13 months) and Cone Brothers Contracting Co. (5th Cir. 1956) 235 F.2d 37 [38 LRRM 2318] (3 weeks).

^{6/} We note that the 493 employees whom the Employer characterizes as having worked in the original eligibility period and who were terminated after that period but before the run-off election are not "turnover" for purposes of eligibility under our Act. Since they voted in the original election, having satisfied the eligibility criterion therefor, they are still eligible to vote in the run-off. We also note that if we express the proportion of "new" workers who did not work in the original eligibility period as a percentage of the sum of the continuing workers who worked both in the original eligibility period and in the two and one-half weeks intervening before the run-off election and the new workers, a figure of only 31% is obtained (362/1181). While this larger percentage is certainly more significant than the proper comparison percentage of 18.4%, we do not consider it of sufficient importance to outweigh the sound practical reasons for generally utilizing the same eligibility criteria for original and run-off elections. (See, e.g., Cone Brothers Contracting Co., *supra*, at p. 40.)

The Employer has failed to adduce precedent in support of an eligibility period that would include those ballots whose challenges the Regional Director recommends that we sustain. Even had the Employer, moreover, offered legal support for such an eligibility period, it would still fail to satisfy the criteria for invoking an altered eligibility period, viz., a substantial passage of time between original and run-off elections, accompanied by substantial employee turnover within that period. We therefore dismiss the Employer's exception, and adopt the Regional Director's recommendation to sustain the challenges to the ballots cast by the 43 individuals whose names appear in Appendix I to our Decision herein.^{7/}

ORDER

In accordance with our Decision herein, the challenges to the 43 ballots cast by the individuals whose names appear in Appendix I are hereby sustained. The challenges to the ballots cast by the 66 individuals whose names appear in Appendix II are hereby overruled, and the Regional Director is directed to open and count those ballots, and thereafter to prepare and serve upon the parties a revised official Tally of Ballots. Should these ballots not prove to be outcome determinative, the Regional Director shall proceed in accordance with Title 8, California Code

^{7/} We defer consideration of the Employer's objections based on the Regional Director's peak determination until objections proceedings have commenced, as is our normal practice. We also find the Regional Director's identification of the Cuevas crew as a labor contractor furnished crew rather than a company crew harmless, if erroneous, under our Act's definition of an agricultural employer. (See Labor Code section 1140.4(c).)

of Regulations section 20363.

DATED: June 29, 1990

BRUCE J. JANIGIAN, Chairman^{8/}

GREGORY L. GONOT, Member

IVONNE RAMOS RICHARDSON, Member

JIM ELLIS, Member

JOSEPH C. SHELL, Member

^{8/} 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.

APPENDIX I

1. Rita P. Garcia
2. Aracely Flores
3. Jose Raul Pena Garcia
4. Homero Sanchez
5. Ernesto Vega
6. Juan Francisco Gonzalez Munoz
7. Jose Francisco Farias
8. Francisco Avina
9. Vicente Lomeli Rios
10. Arturo Rios
11. Santiago Garza Palomares
12. Elvira Flores
13. Miguel Rios Garcia
14. Francisco Leon
15. Ricardo Velasquez Rodriguez
16. Alfredo Zavala Armenta
17. Francisco Zavala Armenta
18. Jaime Zavala Armenta
19. Jose Manuel Avila
20. Francisco M. Campos
21. Paulino Cipriano
22. Gilberto Diaz
23. Pablo Escareno Espindola
24. Pedro Escareno Espindola
25. Francisco Torrez Espinosa
26. Alfredo Espinoza
27. Federico Espinoza
28. Arturo Godinez
29. Bernardo Sanchez Gonzales
30. Jesus Jimenez
31. Salvador Pimentel Lemus
32. Salvador Lemus
33. Francisco Saldana Macias
34. Ismael Rodriguez
35. Sergio Rodriguez
36. Enrique Banales Saldana
37. Antonio Ayala Sanchez
38. Sergio Aguirre Sanchez
39. J. Juan Tapia
40. Francisco Ramirez Vargas
41. Melchor Estrada
42. Jesus Armenta Zavala
43. Ricardo Valesquez Rodriguez

APPENDIX II

1. Danilo Abril
2. Sergio Cabrera Vasquez
3. Raul Angel Valdorinos
4. Nemorio Gonzalez Tello
5. Mario Clemente Hernandez
6. Adrian Duran Mendoza
7. Isidro Peralta Ortiz
8. Roman Flores Ortiz
9. Antelm Fileonio Flores
10. Jose Acevedo Godinez
11. Miguel Angel Acosta
12. Jose Moreno Melgoza
13. Jesus Cabrera Vasquez
14. Alberto Hernandez Ramirez
15. Antonio Lopez Rodriguez
16. Antolin Duran Duran
17. Antonio Isidro Soriano
18. Melesio Reyes Silva
19. Martin Alvarez Sanchez
20. Lorenzo Arevalo
21. Julio Salgado Lopez
22. Joaquin Gonzalez
23. Hector Tejeda
24. Raul Lagunas Serrato
25. Mariano C. Lavarria
26. Victoriana P. Flores
27. Jose R. Martinez
28. Guillermo Escamilla
29. Arturo R. Reyes
30. Jose G. Garcia
31. Remedios G. Aguilar
32. Juan Torres Herrera
33. Jose Estelles
34. Alejandro G. Brambila
35. Luis Alvarez Barrera
36. Jose Arturo Cardenas
37. Modesto Hernandez Ceja
38. Javier Garcia
39. Severiano Garcia
40. Serafin Moreno (Torres)
41. Modesto Torres
42. Juan Antonio Nava Carreon
43. Saul Ramirez
44. Jaime Peralta Verduzco
45. Antonio Gutierrez
46. Vicente Fragoso
47. Roberto Jimenez Velasquez
48. Candido Tapia
49. Guadalupe Aguinya Gonzalez

APPENDIX II (Continued)

50. Jose Hernandez
51. Jose Chavez
52. Jose Luis Perez
53. Gulmaro Cruz
54. Everardo M. Morales
55. Juan Manuel Jimenez Villa
56. Beatriz Munoz
57. Maribel Cortez
58. Delilah G. De Garza
59. Rosendo Zapien Buanos
60. Carlos Cuevas, Jr.
61. Gamalie C. Nunez Martinez
62. Porfirio Escamilla G.
63. Ramon Gonzales
64. Roberto Lozano, Jr.
65. Cristobal Ramirez
66. Fidencio Contreras

CASE SUMMARY

Gerawan Ranches
(Independent Union of Agricultural
Workers, International Brotherhood
of Painters and Allied Trades, AFL-CIO;
United Farm Workers of America,
AFL-CIO, Intervenor)

16 ALRB No. 8

Case No. 90-RC-2-VI

Background

A representation election was conducted among all the agricultural employees of Gerawan Ranches (Employer) on May 9, 1990, by the Regional Director of the Visalia Regional Office of the Agricultural Labor Relations Board (ALRB or Board). The choices on the ballot were the Independent Union of Agricultural Workers, International Brotherhood of Painters and Allied Trades, AFL-CIO, the United Farm Workers of America, AFL-CIO (UFW or Union), and No Union. As the number of challenged ballots resulting was sufficient to affect the outcome of the election, the Regional Director investigated the eligibility of the challenged voters and issued a revised Tally of Ballots on May 11, 1990. That revised tally indicated that the remaining unresolved challenged ballots were not outcome determinative, and that no choice had obtained a majority. Pursuant to 8 CCR § 20375, the Regional Director therefore gave notice of a run-off election on May 14, 1990, to be conducted on the following day between the two choices that had obtained the greatest number of votes, the UFW and No Union. The initial Tally of Ballots in the run-off election indicated that the number of challenged ballots was outcome determinative so that the Regional Director again conducted an investigation of the challenged ballots.

Regional Director's Report

The Regional Director determined that 66 ballots containing the votes of workers whose names did not appear on lists maintained at their polling sites, but whose names did appear on the Employer's master list or on lists of crews furnished by the Employer or labor contractors, should be opened and counted. He further recommended that the challenges to 43 ballots cast by workers whose names did not appear on any applicable eligibility lists, and who executed sworn statements under penalty of perjury that they had not worked in the applicable eligibility period, should be sustained. The Employer took no exception to the Regional Director's recommendation to open and count the first group of 66 ballots, but excepted to the Regional Director's determination that the challenges to the second group of 43 ballots should be sustained. The Employer argued that the ballots should be counted because the workers casting those ballots had either worked for the Employer previously, and/or had worked a substantial number of days prior to the run-off election. The Employer also argued that

the Board's regulations governing run-off election eligibility did not foreclose the inclusion of workers who had not worked in the eligibility period for the original election. The Employer argued in conclusion that pursuant to the Board's decisions in Jack T. Baillie Co., Inc. (1978) 4 ALRB No. 47 and Mel-Pak Vineyards, Inc. (1979) 5 ALRB No. 32, as well as the decision of the National Labor Relations Board in Interlake Steamship Co. (1969) 178 NLRB 128 [72 LRRM 1008], the Board should establish the two and one-half week period intervening between the end of the original eligibility period and the run-off election as the eligibility period for the run-off election.

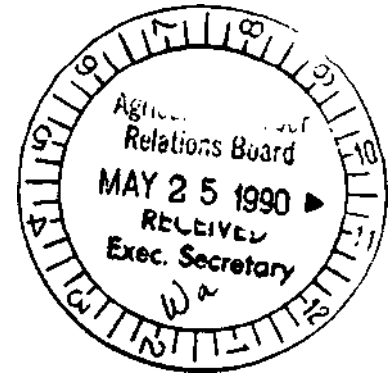
Board Decision

In the absence of exception taken to the Regional Director's recommended resolution of the challenges to the group of 66 voters, the Board adopted pro forma the Regional Director's recommendation to open and count those ballots. The Board, however, rejected the Employer's exception to the Regional Director's recommended resolution of the challenges to the group of 43 voters. The Board found no precedential support for the Employer's contention that workers be deemed eligible to vote merely because they had worked previously for the Employer and/or had worked for a substantial number of days in the interval between the end of the original eligibility period and the run-off election. The Board further determined that its run-off election regulations, read in context with the statute and its Election Manual, made clear that in the absence of extraordinary circumstances only those employees who worked in the original eligibility period were eligible to vote in the run-off election. Finally, the Board rejected the Employer's contention that extraordinary circumstances were present in this matter under Jack T. Baillie, supra, Mel-Pak, supra, and Interlake, supra. First, the cases do not permit an eligibility period of the kind sought by the Employer. Rather than a two and one-half week period between the end of the first eligibility period and the run-off election the cases allow only the payroll period ending immediately prior to the notice of the run-off election to be used as an alternative eligibility period to enhance representativeness. The Employer did not seek an eligibility period as permitted by the cases. Moreover, the six days intervening between original and run-off elections do not constitute a substantial period of time under the cases, nor does the turnover of employees in the unit constitute a substantial portion of the workforce (18.4%). Since the Employer set forth no precedent in support of its desired eligibility period and failed to satisfy the predicates for invocation of an altered eligibility period, the Board dismissed the Employer's exception and directed the Regional Director to open and count the 66 ballots whose challenges it had overruled and thereafter to issue and serve on the parties a revised Tally of Ballots.

* * *

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

BEFORE THE
 AGRICULTURAL LABOR RELATIONS BOARD
 VISALIA REGIONAL OFFICE



In The Matter Of:)
)
 GERAWAN RANCHES,)
)
 Employer,)
)
 and)
)
 INDEPENDENT UNION OF AGRICULTURAL)
 WORKERS, INTERNATIONAL BROTHER-)
 HOOD OF PAINTERS AND ALLIED TRADES)
 AFL-CIO,)
)
 Petitioner,)
)
 UNITED FARM WORKERS OF AMERICA,)
 AFL-CIO,)
)
 Intervenor.)

Case No. 90-RC-2-VI

REGIONAL DIRECTOR'S
 CHALLENGED BALLOT REPORT
 ON RUN-OFF ELECTION

On May 2, 1990, a Petition for Certification was filed by the Independent Union of Agricultural Workers, International Brotherhood of Painters and Allied Trades, AFL-CIO (herein "IUAW") to represent the agricultural employees of Gerawan Ranches (herein "Gerawan"). On May 7, 1990 the United Farm Workers of America, AFL-CIO (herein "UFW") filed a Petition in Intervention.

On May 9, 1990, a representation election was held for the agricultural employees of Gerawan and the initial tally of ballots served on the parties immediately after the count of ballots showed the following results:

IUAW	173
UFW	448
No Union	552

Unresolved Challenged Ballots . . .	158
Total Including Unresolved Challenged Ballots	1,331
Void Ballots	11

On May 10, 1990, IUAW disclaimed interest in further participation in these proceedings.

As the challenged ballots were sufficient in number to determine the outcome of the election, the Regional Director, pursuant to Title 8, California Code of Regulations Sections 20363 and 20375(b), conducted an investigation of the eligibility of the challenged voters. On May 10, 1990 pursuant to the provisions at Section 20375(b), the undersigned issued the Regional Director's Report on Challenged Ballots and on May 11, 1990, Regional Director's Supplemental Report to Challenge Ballots, overruling the challenges to 61 ballots and sustaining the challenges to 38 ballots.

On May 11, 1990, a revised tally of ballots was issued with the following results:

IUAW	178
UFW	479
No Union	581
Unresolved Challenged Ballots	55
Total Including Unresolved Challenged Ballots	1,293
Void Ballots	11

Because after the revised tally it became apparent that no party could garner a majority of ballots, pursuant to California Code of Regulations Section 20375 a run-off election was conducted on May 15, 1990 between the UFW and no union, the two choices with

the most votes. The initial tally of the ballots of the run-off election served on May 15, 1990 showed the following results:

UFW	536
No Union	374
Number of Unresolved Challenge Ballots .	211
Total Including Unresolved Challenged Ballots	1,121
Void Ballots	8

As the challenged ballots were sufficient in number to determine the outcome of the run-off election, the Regional Director, pursuant to Title 8, California Code of Regulations Sections 20363 conducted an investigation of the eligibility of the following challenged voters:

I.

Workers Who Were Voted Challenged as Not on List but Whose Names Appear on the Master Employee List for Gerawan Workers, on the Individual Gerawan Crew Eligibility Lists or on the Eligibility Lists for Labor Contractor
Crews_____

Gerawan has operations on the Westside of the San Joaquin Valley around Raisin City, California and operations on the Eastside of the San Joaquin Valley near Reedley, California.

For the election, Gerawan supplied the ALRB with original crew eligibility lists for all the crews and packing shed employees who worked directly for it and crew eligibility lists for all labor contractor crews who worked during the eligibility period. All voter's names were checked off the crew lists at the voting sites by the parties' observers. The Employer also supplied an original master employee eligibility list containing the names of all the workers who worked directly for Gerawan during

the eligibility period, but excluding the names of workers who worked for Gerawan during the eligibility period through labor contractors.

On May 10, 1990, the Employer advised the Region that approximately 30 crews would be laid off commencing May 11, 1990 and an additional 10 crews would be laid off on May 12, 1990. Based on this information and in order to maximize voter participation the Visalia Regional Director conducted the polling of employees at several additional evening sites on May 15, 1990 not used in the May 9, 1990 election. Additionally, one team of ALRB agents conducted polling of employees during the day among Westside crews working on the day of the election and another ALRB agent team conducted polling during the day among Eastside crews working on the day of the election.

The Westside ALRB voting team also conducted polling in the evening at a location in Raisin City, California. The Eastside ALRB voting team conducted polling at an evening site in Reedley, California. Three other ALRB agent teams conducted polling of workers in the evening at sites in Herman, California, in Madera, California and in Fresno, California.

In order to prevent voters from voting more than once, only the individual original Gerawan crew lists and shed eligibility lists were used during the election along with the original eligibility crew lists for labor contractor crews to check off workers as they voted.

The original crew and packing shed lists of eligible voters were given to the team of Board agents conducting the voting where each respective crew was scheduled to work the day of

the election pursuant to the Company's representations. The splitting of eligibility lists to prevent duplicate voting is an established procedure of both the ALRB and NLRB. ALRB Election Manual Section 26740; NLRB Representation Case Handling Manual Section 13344. In accordance with this procedure, the Westside ALRB voting team received the original crew eligibility lists for crews who were scheduled to work on the Westside on the day of the election. The Eastside ALRB voting team received the original crew list for crews who were scheduled to work on the Eastside on the date of the election. The Eastside Board agent team also received the eligibility list for the packing shed workers and for the crews employed through labor contractors Felix Gonzales and Octavio's Labor Service. The Kerman ALRB voting team received the original eligibility lists for the labor contracting crews employed through Vicente Contracting, Inc. The Fresno ALRB voting team received the original eligibility crew list for the labor contracting crews employed through Contreras Contracting Services. However, the Contreras lists were inadvertently not utilized at Fresno and all voters at the Fresno Site were voted challenged.

The Madera site did not receive an eligibility list and all workers voting there were voted challenged. The following workers voted challenged ballots at the locations indicated below because they did not appear on the eligibility lists in use at the location where they voted or because the location where they voted did not use eligibility lists and all voters voting there voted challenged. Review of the Gerawan Master List, Gerawan crew lists and labor contractor crew lists

confirmed that their names appeared on those lists, and that none of these workers voted at a different site from the site indicated below. Put another way, none of these voters voted more than once, and each could have voted without challenge had they voted where the part of the eligibility list including their name was used by the voting team.

Madera Voting Site

1. Danilo Abril - (Vicent Contracting Inc.)
2. Sergio Cabrera Vasquez - (Contreras Contracting Crew #19)
3. Haul Angel Valdorinos "
4. Nemorio Gonzalez Tello "
5. Mario Clemente Hernandez "
6. Adrian Duran Mendoza "
7. Isidro Peralta Ortiz "
8. Roman Flores Ortiz "
9. Antelm Fileonio Flores "
10. Jose Acevedo Godinez "
11. Miguel Angel Acosta "
12. Jose Moreno Melgoza "
13. Jesus Cabrera Vasquez "
14. Alberto Hernandez Ramirez "
15. Antonio Lopez Rodriguez "
16. Antolin Duran Duran "
17. Antonio Isidro Soriano "
18. Melesio Reyes Silva "
19. Martin Alvarez Sanchez "
20. Lorenzo Arevalo - (Vicente Contracting, Inc.)
21. Julio Salgado Lopez - (Contreras Contracting Crew #7)
22. Joaquin Gonzalez - (Vicente Contracting, Inc.)
23. Hector Tejeda - (Gerawan Crew #40)
24. Raul Lagunas Serrato - (Gerawan Crew #25)

Fresno Voting Site:

25. Mariano C. Lavaria - (Vicente Contracting, Inc.)
26. Victoriana P. Flores "
27. Jose R. Martinez - (Contreras Contracting Crew #7)
28. Guillermo Escamilla "
29. Arturo R. Reyes "
30. Jose G. Garcia "
31. Remedies G. Aguilar "
32. Juan Torres Herrera "
33. Jose Estelles - (Contreras Contracting Crew #18)
34. Alejandro G. Brambila - (Contreras Contracting Crew #7)

Kerman Voting Site;

35. Luis Alvarez Barrera - (Contreras Contracting #10)
36. Jose Arturo Cardenas - (Gerawan Crew #240)
37. Modesto Hernandez Ceja - (Contreras Contracting #10)
38. Javier Garcia "
39. Severiano Garcia - (Master List P.42)
40. Serafin Moreno (Torres) "
41. Modesto Torres "
42. Juan Antonio Nava Carreon - (Gerawan Crew #244)
43. Saul Ramirez "
44. Jaime Peralta Verduzco "

Reedley Voting Site;

45. Antonio Gutierrez - (Master List P.50)
46. Vicente Fragoso - (Contreras Crew #3)
47. Roberto Jimenez Velasquez - (Master List P.118)
48. Candido Tapia - (Contreras Contracting #3)
49. Guadalupe Aguinya Gonzalez - (Master List P.46)
50. Jose Hernandez - (Master List P.53)
51. Jose Chavez - (Master List P.22)
52. Jose Luis Perez - (Octavio's Contracting)
53. Gulmaro Cruz - (Contreras Contracting #14)
54. Everardo M. Morales "
55. Juan Manuel Jimenez Villa "
56. Beatriz Mufioz - (Master List P.77)
57. Maribel Cortez - (Master List P.26)
58. Delilah G. De Garza - (Master List P.42)
59. Rosendo Zapien Buanos (Master List P.14)
60. Carlos Cuevas, Jr. - (Master List P.14)
61. Gamalie C. Nunez Martinez - (Master List P.68)
62. Porfirio Escamilla G. - (Master List P.33)
63. Ramon Gonzales - (Master List P.48)
64. Roberto Lozano, Jr. - (Master List P.64)
65. Cristobal Ramirez - (Master List P.91)
66. Fidencio Contreras - (Master List P.25)

The UFW's position on workers who on further examination were found on one of the eligibility lists is contained in a position statement dated May 21, 1990. Therein the UFW states that the votes should be counted for workers who were challenged for not being on the list and for whom there is no evidence that they voted twice.

Gerawan's position on the challenged votes is that these votes should also be counted upon confirmation that these voters did not vote more than once and that they presented adequate identification to vote in the election.

It is clear from a review of the Gerawan master employee eligibility list, the Gerawan crew eligibility lists and the eligibility lists for the labor contractor crews that all the above -listed workers worked during the eligibility because their names all appear on one of those lists. Therefore, the Region recommends that the challenges to the votes of the workers named above be overruled.

II.

Workers Who Stated in Their Challenge
Declarations That They Did Not Work During the
Eligibility Period or That They Began Working
After the Eligibility Period and Who Do Not
Appear on Any of the Eligibility Lists_

The 43 employees named below state under penalty of perjury in their challenge declarations that they did not work during the eligibility period or that they began working for Gerawan after the eligibility period which ran from April 22, 1990 through April 28, 1990. Most worked in the Cuevas Labor Contracting Crew. Prior to the original election in this matter Gerawan did not provide an eligibility list for the Cuevas crew because it acknowledged that the Cuevas crews did not begin working for the Company until after the end of the eligibility period. None of the workers listed below appear in any of the eligibility lists provided by the Company. The names of the workers who fall in this category are as follows:

1. Rita P. Garcia - (Gerawan - Crew #474)
2. Aracely Floras - (Gerawan - Crew #428)
3. Jose Raul Pena Garcia "
4. Homero Sanchez "
5. Ernesto Vega "
6. Juan Francisco Gonzalez MufSoz - (Gerawan - Crew #352)
7. Jose Francisco Farias "
8. Francisco Avina "
9. Vicente Lomeli Rios - (Gerawan - Crew #428)
10. Arturo Rios "
11. Santiago Garza Palomares "
12. Elvira Flores "
13. Miguel Rios Garcia "
14. Francisco Leon - (Gerawan - Crew #116)
15. Ricardo Velasquez Rodriguez - (Gerawan - Crew #150)
16. Alfredo Zavala Armenta - (Cuevas)
17. Francisco Zavala Armenta "
18. Jaime Zavala Armenta "
19. Jose Manuel Avila "
20. Francisco M. Campos - (Gerawan Crew #172)
21. Paulino Cipriano - (Contreras Contracting)
22. Gilberto Diaz - (Cuevas)
23. Pablo Escareno Espindola - (Cuevas)
24. Pedro Escareno Espindola "
25. Francisco Torrez Espinosa "
26. Alfredo Espirioza "
27. Federico Espinoza "
28. Arturo Godinez - (Cuevas)
29. Bernardo Sanchez Gonzales - (Cuevas)
30. Jesus Jimenez "
31. Salvador Pimentel Lemus "
32. Salvador Lemus "
33. Francisco Saldana Macias "
34. Ismael Rodriguez "
35. Sergio Rodriguez "
36. Enrique Banal.es Saldana "
37. Antonio Ayala Sanchez "
38. Sergio Aguirre Sanchez "
39. J. Juan Tapia "
40. Francisco Ramirez Vargas - (Contreras)
41. Melchor Estrada - (Cuevas)
42. Jesus Armenta Zavala - (Cuevas)
43. Ricardo Valasquez Rodriguez - (Gerawan Crew #150)

The UFWs position on workers who were challenged for not being on the list and who stated in their challenged ballot declaration that they did not work during the eligibility period is that the challenges to the votes of these workers should be sustained. The Employer's position on the these challenges is

that because the Board's regulation concerning run-off elections, California Code of Regulations Section 20375, does not specifically state that individuals hired after the eligibility date are ineligible, they should be counted to avoid an unrepresentative electorate in the run-off and that the challenges to these ballots should be overruled.

However, Section 20375(a) states "All persons eligible to vote in the initial election shall be eligible to vote in the run-off election." Nevertheless, the Company cites two cases for the proposition that employees hired after the eligibility period for the initial election should be eligible to vote in a run-off election, Jack T. Bailie Company, Inc. (1978) 4 ALRB No. 47 and Mel-Pack Vineyards, Inc. (1979) 5 ALRB No. 32. However, these cases are clearly distinguishable from the present situation in that the rerun election took place nine months and two years, respectively, after the initial elections. Here, the rerun election took place 6 days after the initial election. NLRB authority cited by the employer is similarly distinguishable. The ALRB Election Manual, Section 29300 provides that where following the resolution of challenged ballots, "[o]nly those employees eligible to vote in the first election may vote in the run-off," except where a long period of time has passed between the original election and the run-off. The NLRB Representation Manual, Section 11350.5, similarly provides that "No one who was not eligible to vote in the original election can be eligible to vote in the run-off election."

Moreover, as noted above, these workers all stated that they began working with Gerawan after the eligibility period. The Company acknowledged the same when it provided the lists of eligible workers. None of these workers appeared in any of the eligibility lists which were provided by the Company. For all these reasons the Region recommends that the challenges to these votes be sustained.

RECOMMENDATION

It is hereby recommended that the challenges to the 66 ballots discussed in Section I be overruled and the ballots counted.

It is further recommended that the challenges to the 43 ballots discussed in Section II be sustained and the ballots remain sealed and not counted.

And finally, the Regional Director recommends that the remaining 102 challenged ballots be placed in abeyance pending further investigation if they are found to be outcome determinative.

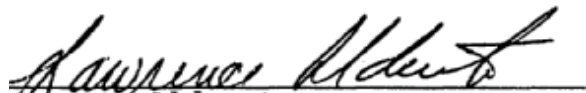
CONCLUSION

Pursuant to Title 8, California Code of Regulations, Section 20363, exceptions to the conclusions and recommendations of the Regional Director are to be filed with the Executive Secretary by personal service within five (5) days or by deposit in certified mail postmarked within five (5) days following service upon the parties of the Regional Director's Report. An

original and six (6) copies of the exceptions shall be filed and shall be accompanied by seven (7) copies of declarations and other documents evidence in support of the exceptions. Copies of any exceptions and supporting documents shall be served pursuant to Section 20430 on all other parties to the proceeding and on the Regional Director and proof of service shall be filed with the Executive Secretary along with the exceptions.

Dated: May 23, 1990

Respectfully submitted,

A handwritten signature in cursive script, reading "Lawrence Alderete", is written over a horizontal line.

Lawrence Alderete
Visalia Regional Director
Agricultural Labor Relations
Board 711 N. Court Street,
Suite A Visalia, California
93291