

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

FREITAS BROTHERS, a)	
partnership,)	
)	Case No. 91-RC-2-SAL
Employer,)	
)	
and)	
)	17 ALRB No. 18
INTERNATIONAL BROTHERHOOD OF)	(December 5, 1991)
TEAMSTERS, CHAUFFEURS,)	
WAREHOUSEMEN, AND HELPERS OF)	
AMERICA, AFL-CIO, LOCAL 986,)	
)	
Petitioner.)	
_____)	

Decision and Order on Challenged Ballots

Following the filing on July 15, 1991, of a petition for a representation election including all the agricultural employees of Freitas Brothers, a partnership (Employer), by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO, Local 986 (Teamsters or Union), the Regional Director of the Salinas Regional Office of the Agricultural Labor Relations Board (ALRB or Board) conducted an election on July 22, 1991, the results of which were as follows:

Teamsters	11
No Union	9
Unresolved Challenges	3
Total Number of Ballots	23
Void Ballots	1

As the number of unresolved challenged ballots was sufficient to affect the outcome of the election, the Regional Director conducted the investigation into the challenged ballots mandated by Title 8, California Code of Regulations, section 20363(a), and issued his Report on Challenged Ballots on November 4, 1991. Therein he determined that employees Juan Copado and Pedro Flores were statutory supervisors within the definition of Labor Code section 1140.4(j), and recommended that the challenges to their ballots be sustained. He also found that employee Fernando Copado was not a statutory employer, and therefore recommended that the challenge to his ballot be overruled, and that his ballot be opened and counted. The Employer timely filed exceptions to the Regional Director's findings that Juan Copado and Pedro Flores were statutory supervisors. The Union filed no exceptions.

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

Upon consideration of the Regional Director's Report on Challenged Ballots and the Employer's exceptions thereto, the Board has decided to affirm the Regional Director's findings and conclusions insofar as consistent with our decision herein, and to issue the attached Order.

Necessity for an Evidentiary Hearing

We find merit in the Employer's contention that material issues are raised by its declarations in support of a finding that

^{1/} All section references herein are to the California Labor Code unless otherwise specified.

Juan Copado and Pedro Flores are not statutory supervisors. We also note that the Regional Director's unexcepted to finding that Fernando Copado is not a statutory supervisor will cause Fernando Copado's ballot to be opened and counted. The resulting tally may be outcome determinative, rendering unnecessary further action on the remaining challenged ballots of Juan Copado and Pedro Flores. To expedite to the fullest extent possible the issuance of a final revised tally of ballots, we will order the Regional Director to open and count Fernando Copado's ballot and immediately issue a revised tally of ballots. If Juan Copado's and Pedro Flores's ballots should be outcome determinative, at that juncture we will provide for an investigative hearing to resolve their eligibility.

ORDER

The challenge to the ballot of Fernando Copado is hereby overruled in accordance with the Regional Director's recommendation. The Regional Director shall open and count Fernando Copado's ballot and issue a revised tally of ballots, and shall serve the revised tally on the parties and the Executive Secretary. If, after Fernando Copado's ballot is opened and counted, the ballots of Juan Copado and Pedro Flores should be outcome determinative, the Executive Secretary shall provide for an investigative hearing

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to resolve Copado's and Flores's eligibility at a time and place to be specified by the Executive Secretary.

DATED: December 5, 1991

BRUCE J. JANIGIAN, Chairman

IVONNE RAMOS RICHARDSON, Member

JIM ELLIS, Member

CASE SUMMARY

Freitas Brothers, a partnership
(International Brotherhood of
Teamsters, Chauffeurs, Warehousemen,
and Helpers of America, AFL-CIO,
Local 986)

17 ALRB No. 18
Case No. 91-RC-2-SAL

Background and Regional Director's Challenged Ballot Report

After the filing of an election petition by International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO, Local 986 (Union or Teamsters) to represent all the agricultural employees of Freitas Brothers, a partnership (Employer) on July 15, 1991, the Regional Director of the Salinas Regional Office of the Agricultural Labor Relations Board (ALRB or Board) conducted an election on July 22, 1991, the results of which indicated that 11 votes were cast for the Teamsters, 9 votes for no union, one void ballot was cast, and three challenged ballots remained unresolved. As the remaining challenged ballots were determinative of the outcome, the Regional Director conducted an investigation of the eligibility of Juan and Fernando Copado and Pedro Flores whose ballots had been challenged. The Regional Director determined that Juan Copado and Pedro Flores were statutory supervisors as alleged in the challenges to their eligibility, but found that Fernando Copado was not a supervisor. The Regional Director therefore recommended that the ballot of Fernando Copado be opened and counted, but recommended that the challenges to the ballots cast by Juan Copado and Pedro Flores be sustained. The Employer timely filed exceptions to the Regional Director's findings that Juan Copado and Pedro Flores were statutory supervisors, arguing that its declarations put in issue all the Regional Director's findings and, alternatively, that the record showed that Juan Copado and Pedro Flores were not supervisors. No exceptions were filed to the Regional Director's finding that Fernando Copado was not a statutory supervisor and therefore eligible to vote.

Board Decision

The Board found merit in the Employer's contention that its declarations placed in issue the findings relied upon by the Regional Director to conclude that Juan Copado and Pedro Flores were statutory supervisors. The Board noted, however, that as no exceptions had been taken to the Regional Director's finding that Fernando Copado was eligible to vote, and that his vote could eliminate the necessity of resolving by hearing the status of Juan Copado and Flores, it would serve the interest of expeditious handling of election matters to open and count Fernando Copado's ballot. The Board therefore ordered the Regional Director to open and count Fernando Copado's ballot and to issue and serve on the parties and the Executive Secretary a revised tally of ballots. The Board also ordered the Executive Secretary

to set an investigative hearing to resolve the status of Juan Copado and Pedro Floras at a time and place to be specified by the Executive Secretary if Fernando Copado's ballot did not determine the winner of the election.

* * *

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

* * *

the challenges. Declarations were taken and interviews conducted. The Regional Director has carefully considered all evidence submitted by the parties and hereby issues the following report.

I.

STATEMENT OF FACTS

A. Jurisdiction

The Employer is a grower of lettuce and broccoli with its operations located primarily in Santa Barbara and San Luis Obispo counties, California. Its employees work mainly as tractor drivers, irrigators, sprinklers, and hoers and thinners.

B. Payroll Period

The pertinent weekly payroll period was July 8, 1991 through July 14, 1991. There were 24 agricultural employees employed by the Employer during this period.

C. The Challenges

Juan Copado, Pedro Flores, and Fernando Copado were challenged by the Teamsters as ineligible to vote on the grounds that they were supervisors. The Employer disputed this contention.

1. Juan Copado

Initially, it should be stated that during our investigation a document was obtained signed by Chris Freitas in which the Employer itself referred to Juan Copado as a supervisor. When an ex-foreman, Vicente Ramos, was fired for refusing to accept night work, his "Notice of Termination"

contained the following language.

"As of July 3, 1991 you are terminated for the following reasons:

1. Refusing to follow instructions given by direct supervisor, Juan C. Copado."

In his Declaration, Juan Copado stated that he works 12-13 hours per day at a variety of jobs - all aspects of tractor driving, as well as irrigating, sprinkling, and equipment servicing - and this versatility allows him to fill in for any worker who is unexpectedly absent. The tractor work takes up 50% of his time; the sprinkler and irrigation work, 20%, and 20% is spent relaying messages to and from the Freitases to the employees or vice versa. Being bilingual, he is asked by the Freitases to translate orders from English into Spanish and to give them to the employees.

Copado further declared that he receives instructions from either Chris, Eric, and/or Jon Freitas and also communicates closely with them during the work day, especially during the irrigation phase of his duties where he is required to turn the pumps on and off after traveling back and forth to the various plots, sometimes after hours. For this purpose and others the Employer provides him with a pickup truck and a radio. (Copado also takes the pickup home with him in the evening).

According to Copado, a typical day would find the employees reporting in the morning to the shop where he would relay to them instructions from the Freitases regarding any "change at work". In addition, during the work day, the Freitases might call Copado on his radio with further instructions for the employees, e.g., how many irrigation lines

to be placed in the fields, at which point Copado would relay this information to Pedro Flores, infra. Copado denied that he decided which fields the employees were to be assigned to, declaring that either the Freitasases told said employees directly their assignment or the Freitasases instructed him to so inform the employees.

Copado acknowledged that the Freitasases sometimes told him to "review-check" the tractor drivers' work, which he did, but that he would only check the work upon the Freitas¹ request. Copado further declared that the Freitasases would tell him how they wanted the job done if they became dissatisfied with a particular employee's performance and that he would then convey this information to the employee involved.

Copado did not dispute that the employees would ask him for days off, but he stated that this was because he had the radio. He stated that when such requests occurred, he would call the Freitasases for approval.

Copado further acknowledged that he had passed out the employees' pay checks but declared that this only happened when the Freitasases were unavailable.

Copado also agreed that he, along with Pedro Flores, Fernando Copado, and Jesus Guerrero, had served as members of the "Safety Committee" and had attended a meeting with Jon Freitas and an insurance company representative.

Finally, Copado is paid a higher wage than the other employees (\$7.50 vs. \$7.10 per hour) because, according to him, he performed more jobs than they, and the Freitasases wanted to keep him happy.

In contrast, several declarants stated that Copado was their supervisor. Pedro Flores, himself one of the challenged voters, infra, declared that Copado was his supervisor. Several other employees identified Copado as their supervisor to whom they were told upon hire by the Freitas to report any problems they had. One declarant indicated that Chris Freitas had introduced Copado to the crew as a supervisor in March of 1991 and that thereafter, Copado's job changed from that of full time tractor driver to one with a variety of duties, including going from tractor driver to tractor driver in the Employer's pickup truck checking on their work assignments.

Several declarants assert that Copado opens the shop in the morning, gives orders of what to do for that day, where to do it, and assigns workers to these tasks without contacting the Freitas or anyone else via the radio. Two declarants stated that Copado had granted them a one day leave of absence on the spot without having to check with anyone on the radio or through other means. Declarants state that Copado kept the employees' time; employees arriving late to work would report to him. Declarations also state that employees recalled to work would be recalled by Copado.

2. Pedro Flores

In his Declaration Flores stated that he is "in charge of the thin crew" and that he made sure that "they are doing the

job right." He declared that he was a foreman¹ and that Juan Copado was his supervisor.² According to Flores, his duties were to "direct the work of the crew" by instructing them where to thin; orders to change fields were received from Jon Freitas. Flores also checked the work of the employees.³ Should that work be poor or incorrect, he would bring it to the Freitas¹ attention.⁴ Flores worked with the thinning crew sometimes all day, but on some occasions he would leave the crew to perform other jobs.

Flores keeps track of the hours worked of each employee and submits this information to Jon Freitas weekly. Whenever a worker is late to work, Flores so notes it on the time card and turns it into the office. Flores declares that it is he who almost always hands out the paychecks.

Flores asserts that he does not hire anyone directly, but that following layoffs, it is he that recalls the workers

¹This statement was made in Flores' "Challenge Declaration" of July 22, 1991 at the time his vote was challenged during the election. In his much later declaration of October 11, 1991 he denied that he was a foreman. Flores admitted, however, that since the election he had had several meetings with the Employer's attorney.

²In their joint Declaration of July 31, 1991, the Freitasases asserted that Juan Copado would tell Flores what to do but had no independent authority to supervise his activities.

³In their joint Declaration the Freitasases declared that Flores did instruct workers as to the correct way to hoe but that he did not discipline them.

⁴Chris Freitas stated during an interview that upon hearing of an employee's poor performance, it was he who went back to review the work. But meanwhile, he would tell Flores to keep checking on the person who had not been performing up to standard.

back to work on orders of Jon Freitas.

Flores declared that he alone decides when the breaks are to be taken. He also sees to it that the crew has drinking water and restroom facilities available. According to Flores, he has the ability on his own to grant workers permission to take a day off⁵ but not for more than that one day. Flores also stated that he has the authority to discipline employees though he has never done so.⁶

Flores is paid .20 more per hour than the other thinners and hoers. Flores explained that he received a higher wage because he is "__ in charge of more than they are."

The declarations from employees indicate that at the time Flores assumed his present position, Jon Freitas announced to the crew that Vicente Ramos was no longer working there⁷ and had been replaced by Flores.⁸ Thereafter, according to these declarations, Flores' job function changed significantly. Whereas before he would take a row to thin out the weeds like the

⁵The Freitas deny that Flores has any authority to grant leaves of absences.

⁶This was another statement that was made in Flores' "Challenge Declaration" on July 22, 1991 at the time his vote was challenged during the election. His later Declaration of August 9, 1991 denied he had such authority.

⁷As was referred to earlier, Vicente Ramos was discharged on July 3, 1991 for refusing an order from Juan Copado to work at night. It is not disputed that Ramos had been the foreman of the thinning and sprinkler crews with the authority to hire and fire.

⁸Chris Freitas acknowledged that he and his two brothers, Jon and Eric, introduced Flores to the crew and told them that Flores was going to be giving them instructions and that if they had a problem, to tell Flores and Flores would tell them.

rest of the crew, now he would simply walk around and check on all the rows, correcting the work performance where he believed it to be necessary. While he would use the Employer's radio sometimes, he did not have to do so for approval for one day leaves, the timing of breaks, or instructions of when and where to report for work. Flores also recorded the time, announced if there were to be work the next day, and recalled employees back to work. The declarants further stated that when the Freitas came to the field, they didn't speak to the crew but to Flores instead.

Some declarants indicated that Flores had told the crew that Jon Freitas had told him that he had authority to discharge anyone that he didn't want. In one instance, two declarants were threatened by Flores with discharge if they didn't work faster.

3. Fernando Copado

Fernando Copado declared that he works 10-12 hours per day and does all the jobs available at the ranch from time to time, including all phases of the tractor driving (where he spends the majority of his time), bringing in trailers, sprinkling, and irrigating, e.g., checking on the water and turning the pumps on and off. His irrigation duties take him to various locations, and his various jobs require him to use the Employer's truck. He keeps his own time. This diversity of skills allows him to fill in when a co-worker is unexpectedly absent. Copado works mainly on two relatively small ranches, one of 60 acres and the other consisting of 90 acres where a small number of employees are employed, e.g., one other tractor driver and two sprinklers.

Copado denied that he directed the work of others. While he admitted that a worker would come to him when he had finished his assignment or wanted time off, Copado stated that he would merely get on the radio in order to contact one of the Freitasas to ask for instructions, which would then be conveyed to the individual worker in question. Likewise, the Freitasas would use the radio to contact him. Copado emphasized that any order had to come from the Freitasas.

Copado acknowledged that he was called upon to check up on the work of individual workers but only if so instructed by one of the Freitasas. Copado has been told that should other workers from the other ranch come over to where he was located, he was to check with them to see if they needed any help, e.g., where to set the sprinkler line which, coming from the thinning crew, they would not know on their own. On the other hand, Copado stated that the tractor drivers that came over usually knew what to do so they required very little assistance.

Copado denied that he was a foreman, that he had any authority to discipline anyone or that he had ever fired anybody. He also denied that he had the authority to hire employees or to resolve their grievances.

II.

ANALYSIS AND RECOMMENDATION

The "primary indicia" for determining whether an individual is or is not a supervisor is set forth in section 1140.4(j) of the Agricultural Labor Relations Act (hereinafter ALRA or Act):

The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

This statutory definition is virtually identical to the language of section 2(11) of the National Labor Relations Act (hereafter "NLRA"), 29 USCA section 151, et seq. Under both the NLRA and the ALRA the statutory language is interpreted in the disjunctive, and the possession of any one of the enumerated powers, if the product of the exercise of independent judgment, is sufficient to establish supervisory status. (Big Rivers Electric Corporation) (1983) 266 NLRB No. 72 [112 LRRM 1369]; Dairy Fresh Products Co. (1977) 3 ALRB No. 70; Dave Walsh Company (1978) 4 ALRB No. 84.) In addition, the statute does not require the exercise of the power described for all or any definite part of the employee's time. It is the existence of the power which determines the classification. (Ohio Power Co. v. N.L.R.B. (6th Cir. 1949) 176 F.2d 385 [24 LRRM 2350], cert. den. (1949) 338 U.S. 899 [25 LRRM 2179]; Eastern Greyhound Lines v. N.L.R.B. (6th Cir. 1964) 337 F.2d 84; Nitro Super Market. Inc. (1966) 161 NLRB 505, 511.) Thus, the authority to exercise any of the statutory functions may classify one as a supervisor even if most of his time is spent in normal production or maintenance duties. (N.L.R.B. v. Brown and Sharpe Mfg. Co. (1st Cir. 1948) 169 F.2d 331, 334 [22 LRRM 2363]; Dairy Fresh Products Co., *supra* (1977) 3 ALRB No. 70; Perry's Plants. Inc. (1979) 5 ALRB No. 17, ALJD,

p. 37; Foster Poultry Farms (1980) 6 ALRB No. 15. See also German, "Basic Text on Labor Law" (1976), p. 36.)

Under this standard, supervisory status has been found where an individual on just 2-3 occasions had hired employees. Dave Walsh Company, *supra*. In Joe Maggio, Inc. (1979) 5 ALRB No. 26, a service truck driver who had on just one occasion hired someone while the foreman of the tractor department was on vacation was found to be a statutory supervisor. This was true despite the fact that there was no evidence that he had independent authority to transfer, suspend, layoff, recall, promote or adjust grievances. In Rod McLellan (1978) 4 ALRB No. 22 an individual who directed others on only one occasion and who "effected the discharge of an employee" on another occasion was found to be a statutory supervisor.

Supervisory status was also found where the individuals were paid more than the rank and file, distributed paychecks, were told to relay instructions to an employee that he was fired, assisted company officials in the assignment of work to employees, employees off sick would report to them, employees leaving work because of illness would do the same, employees who forgot to punch their timecard would sometimes go to these individuals to have their timecards validated, and company officials would look to them to see how work was progressing. Laminating Services, Inc. (1967) NLRB 234, 238, cited with approval in Dairy Fresh Products, *supra*, (1977) 3 ALRB No. 70.

In Perry's Plants, Inc. *supra*. (1979) 5 ALRB No. 17, ALJD, pp. 32-33, a woman was found to be a supervisor though 90% of her time was spent doing the same work as the other members of

the crew. However, other jobs included being handed by the production manager a daily list of plants to be prepared, deciding which repair job should be done first and by whom, and teaching others how to do the repair work and occasionally the planting. She would also report which members of her crew were capable of planting; and she once reprimanded a worker for poor work. She also kept production records for the crew and was paid a higher salary.

Individuals who carried out production schedules which had been arranged for them by higher ups and from which they could only depart in minor matters or in emergencies, whose recommendations could only be effectuated upon approval of the company's personnel department and who were bound by carefully formulated rules were still found to be supervisors where they exercised discretion in carrying out their orders. NLRB v Budd Mfg. Co. (6th Cir. 1948) 169 F.2d 571 [22 LRRM 2414], cert. den. (1949) 335 U.S. 908 [23 LRRM 2228].

In the case of Juan Copado, I begin my analysis by emphasizing the importance of the Employer's discharge of ex-foreman Vicente Ramos on the grounds that he refused to follow the instructions of "direct supervisor, Juan Copado." The statement, of course, is an important admission on the part of the Employer that Copado was a supervisor. But even more significantly, it points out Copado's authority to effect the discipline of an employee. Regardless of whether the order given Ramos by Copado came from the Freitases with Copado as the conduit or came independently from Copado, the result was the same so far as Ramos was concerned: his refusal to carry out

Copado's direct order resulted in his discharge for insubordination. Thus, Copado's order and subsequent report to the Freitas that his order had not been obeyed effected the discharge of the insubordinate employee.

In addition, the declarations illustrate that Copado was more than a mere relay of information. Rather, they established that he directed the employees' work, told them how the job should be performed, and corrected their work performance.

In Anderson Farms Company (1977) 3 ALRB No. 67 an individual's (Chappa's) duties included overseeing the tomato sorters to insure that they were sorting according to the head supervisor's dictates. Pursuant to orders, Chappa would get on the tomato machines to check the sorters' work and the quality of the tomatoes, reporting any problems to the head supervisor. If a worker were not performing his duties properly based upon Chappa's report, the head supervisor, would then talk to the worker. Thereafter, if Chappa were to again report a problem to the head supervisor, the head supervisor would discharge him. The Board found that Chappa had the responsibility to direct the work of the tomato sorters and to effectively recommend discipline. See also M. Caratan, Inc. (1979) 5 ALRB No. 16, ALJD, pp. 26-27.

In Dairy Fresh Products, supra (1977) 3 ALRB No. 70 supervisory status was found where an individual (Chavez) ordered others to do work, threatened them with discharge if they did not comply, and informed an employee as to the reasons for her discharge. On one occasion, Chavez ordered an employee to do

a certain job; and when she refused, Chavez returned with two supervisors who warned the employee she should do as she was told or to punch out and go home. See also Foster Poultry Farms (1980) 6 ALRB No. 15 where a supervisor was found to be a person who filled out time cards and evaluated employees' work performance, thereby effectively recommending wage increases.

Furthermore, Copado, on his own, told the employees what to do for that day, the location of that work and who was to do it. He also granted one day leaves of absence without having to check with the Freitases.

The facts of this case indicate that Juan Copado possessed at least one of the statutory criteria for supervisory status. Big Rivers Electric Corporation, supra (1983) 266 NLRB No. 72, [112 LRRM 1369].

Though the exercise of one or more of the statutorily defined functions is always the focal point in assessing supervisory status, both the NLRB and ALRB consider "secondary indicia" in borderline cases. One of the more important of these is whether the individual was considered by co-workers to be a supervisor. See Gerbes Supermarket, Inc. (1974) 213 NLRB 112, [87 LRRM 1762]; Dairy Fresh Products Company, supra (1977) 3 ALRB No. 70. In Dairy Fresh, the Board pointed out that the employees' impression of an individual's position with the company is only evidence and not an independent factor in finding supervisory status. However, where management either confirms or fails to deny the said individual's authority, thus making it appear that the individual is allied with management, such

conduct effectively reinforces the individual's authority over the employees.

Moreover, in an unfair labor practice setting, the fact that the employees look to the individual in question as the representative of management is often crucial in determining whether that individual can bind management. For example, in Superior Farming Co. v Agricultural Labor Relations Board (1984) 151 Cal.App.3d 100, 198 Cal. Rptr. 608, the Court stated

" - - - . Although Zacarias exercised very little independent judgment as a 'crew boss', he regularly translated orders given by his superiors to the crew and acted as a 'conduit' to relay work instructions and pay rates. Given Zacarias' role as the interface between the crew and management and his frequent duties as a conveyor of management policy to those under him, there is substantial evidence to support the conclusion that the crew reasonably believed Zacarias was acting on management's behalf in delivering the news of the 'discharge' following his conversation with Menchaca. Therefore, while we agree with the Board that the facts of this case are anomalous, we affirm its finding that Superior was properly held responsible for Zacarias' actions." (Footnote omitted) 151 Cal.App.3d at 119. See also, I.A. of M. v Labor Board (1940) 311 U.S. 72, 61 S. Ct. 83. and Vista Verde Farms v Agricultural Labor Relations Board (1981) 29 Cal.3d 307. 172 Cal.Rptr. 720.

Here it is clear that the Freitas in introducing Juan Copado to the crew and explaining his job duties, in changing his routine and function and giving him direct authority to speak in their names succeeded in giving the employees the impression that he was indeed their supervisor, even assuming arguendo that there were no other independent factors establishing such status.

Further, Pedro Flores, whom I also find to be a supervisor, infra, reports to Copado and regards him as his supervisor.

Finally, it will be recalled that Copado kept the employees' time, recalled workers to work, passed out paychecks, was paid a higher wage than the rank and file, and attended a management meeting as a member of the Safety Committee.

In view of the above facts, I find that Juan Copado is a statutory supervisor within the meaning of the Agricultural Labor Relations Act. As such, the challenge to his ballot should be sustained.

As to Pedro Flores, it will be recalled that he admitted to being a foreman,⁹ being in charge of the hoe and thin crew, directing their work, reviewing their work, deciding on his own when breaks were to be taken, granting on his own leaves of absence of up to one day, and having the authority to discipline.

Further, Flores replaced the discharged foreman Vicente Ramos, same being announced to the crew by Jon Freitas. Flores thereafter assumed Ramos¹ duties, thereby changing his own job function considerably.

In addition, Flores kept track of the employees' time, announced if there were work the next day, handed out paychecks, recalled workers to work, and arranged for drinking water and bathrooms facilities.

⁹The Board has held in *Karahadian & Sons. Inc.* (1979) 5 ALRB No. 19, that an individual's belief that he or she is a supervisor may be evidence of supervisory status.

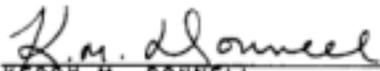
Finally, Flores had other duties besides thinning and hoeing and was paid a higher wage than the other employees.

I find that Pedro Flores was a statutory supervisor within the meaning of the Agricultural Labor Relations Act and that the challenge to his ballot should be sustained.

In the case of Fernando Copado, however, I do not find that he possessed any of the enumerated powers which would make him a supervisor. There is no evidence that he had any authority to exercise any of the statutory functions. The performance of his duties did not involve his use of independent judgment nor did he possess any of the other indicia that would render him a supervisor within the meaning of the Act. Accordingly, I conclude that Fernando Copado was not a supervisor, that the challenge to his ballot should be overruled, and that his vote should be counted.

Respectfully submitted,

Dated: 11-4-91


KERRY M. DONNELL
Regional Director
Agricultural Labor Relations Board
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