

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

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| COASTAL BERRY COMPANY, LLC, |) | |
| |) | |
| Employer, |) | Case No. 99-RC-4-SAL |
| |) | |
| And |) | |
| |) | |
| |) | 25 ALRB No. 3 |
| |) | (August 12, 1999) |
| |) | |
| UNITED FARM WORKERS OF AMERICA, |) | |
| AFL-CIO, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| And |) | |
| |) | |
| |) | |
| COASTAL BERRY OF CALIFORNIA |) | |
| FARMWORKERS COMMITTEE, |) | |
| |) | |
| Intervenor. |) | |

DECISION ON CHALLENGED BALLOTS

On June 25, 1999, the Regional Director of the Salinas Regional Office of the Agricultural Labor Relations Board issued his Report on Challenged Ballots in the above-captioned case.¹ Of the 92 unresolved challenged ballots, the Regional Director recommended that 56 of the challenges be overruled and the ballots counted, that 17 of the

¹ In the election held on June 3 and 4, the initial tally of ballots reflected the following results: Coastal Berry of California Farmworkers Committee (Committee) 688, United Farm Workers of America, AFL-CIO 598, Unresolved Challenged Ballots 92. As no choice on the ballot received an outright majority of ballots cast, the challenged ballots were outcome determinative.

challenges be sustained, and that 19 remain unresolved because they require further investigation.

The United Farm Workers of America, AFL-CIO (UFW) timely filed exceptions to the Regional Director's Report, pursuant to section 20363 of the Board's regulations (Cal. Code Regs., tit. 8, §20363).² The Agricultural Labor Relations Board has reviewed the Regional Director's Report

² Section 20363(b) of the regulations states that a party filing such exceptions shall serve the exceptions and supporting documents on all other parties to the proceeding. (Cal. Code Regs., tit. 8, §20363(b).) On July 12, 1999, Coastal Berry Company, LLC (Employer) filed a motion asking for an order that the UFW comply with regulations sections 20363(b) and 21066 by serving on all parties an unexpurgated copy of all materials submitted to the Board in support of their exceptions. (Cal. Code Regs., tit. 8, §§20363(b) and 21066.) Attached to the Employer's motion was a copy of the exceptions served on the Employer by the UFW, from which the names of persons who had submitted declarations in support of the UFW's exceptions had been redacted. The motion further stated that the declarations themselves were not served on the Employer. On August 5, 1999, the UFW filed a response to the Employer's motion in which it argued that the Employer's motion should be denied on grounds that ALRB case law and regulations provide for the confidentiality of statements and identities of agricultural workers involved in Board unfair labor practice proceedings (citing Cal. Code Regs., tit. 8, §§20236, 20238, 20213, 20274(a), and Giumarra Vineyards Corporation (1977) 3 ALRB No. 21). Because section 20363 of the regulations, unlike the unfair labor practice regulations cited by the UFW, does not include a provision allowing declarants' names to be held confidential, the Board finds that the UFW's service of its exceptions on the other parties to this case was defective. However, we find it unnecessary to rule on the Employer's motion, since the exceptions do not provide a sufficient reason for disturbing any of the Regional Director's recommendations.

It may be that the same concerns of possible retaliatory actions against agricultural workers that exist in unfair labor practice proceedings also exist in challenged ballot proceedings. Therefore, in future reviews of regulations, the Board may consider amending section 20363 to include the same protection of declarants' confidentiality that is provided in regulations governing unfair labor practice proceedings.

In its reply to the Employer's motion, the Committee, in addition to arguing that it was unnecessary to rule on the motion, asked the Board to open and count immediately the overruled challenges that were not excepted to by the UFW. In light of the disposition of this case, it is unnecessary to rule on this request.

of Challenged Ballots in light of the exceptions and supporting materials filed by the UFW and has concluded that the UFW has failed to provide a sufficient basis for disturbing any of the Regional Director's recommendations. Therefore, the Report on Challenged Ballots is hereby affirmed in its entirety. Where a party fails to raise in its exceptions a material factual dispute which would warrant further investigation or hearing, or where conclusory statements in the brief filed in support of the exceptions are not supported by declarations or documentary evidence, the Board shall be entitled to rely on the challenged ballot report. (*Capco Management Group, Inc.* (1980) 15 ALRB No. 13; *Sequoia Orange Co.* (1987) 13 ALRB No. 9 .)³ The Regional Director shall open and count those

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³ While the eligibility of the challenged voters has been determined herein as a final matter, the Regional Director's determinations as to related issues, such as whether specific employees

ballots to which the challenges have been overruled, as set forth in his report, and shall issue a revised tally of ballots.

DATED: August 12, 1999



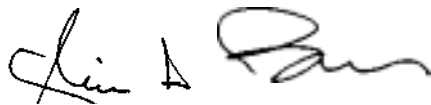
GENEVIEVE A. SHIROMA, Chair



IVONNE RAMOS RICHARDSON, Member



MICHAEL B. STOKER, Member



GLORIA A. BARRIOS, Member



HERBERT O. MASON, Member

are supervisors, having not been fully litigated in an evidentiary hearing, are not binding in any subsequent proceeding.

CASE SUMMARY

COASTAL BERRY CO. , LLC
(UFW, CBCFC)

Case No. 99-RC-4-SAL
25 ALRB No. 3

Background

In the election held on June 3 and 4, 1999, the initial tally of ballots reflected the following results: Coastal Berry of California Farmworkers Committee (Committee) 688, United Farm Workers of America, AFL-CIO (UFW) 598, Unresolved Challenged Ballots 92. As no choice on the ballot received an outright majority of ballots cast, the challenged ballots were outcome determinative. In his Report on Challenged Ballots, the Regional Director recommended that 56 of the challenges be overruled and the ballots counted, that 17 of the challenges be sustained, and that 19 remain unresolved because they require further investigation. The UFW timely filed exceptions to the Regional Director's resolution of 35 of the challenged ballots.

Board Decision

The Board reviewed the Regional Director's Report on Challenged Ballots in light of the exceptions and supporting materials filed by the UFW. The Board concluded that the UFW failed to provide a sufficient basis for disturbing any of the Regional Director's recommendations. Therefore, the Report on Challenged Ballots was affirmed in its entirety. The Board also noted that the UFW's service of its exceptions and supporting materials on the other parties was defective. However, in light of the failure of the exceptions to provide a basis for disturbing the Regional Director's recommendations, the Board found it unnecessary to rule on the Employer's motion to compel the UFW to correct its service.

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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.