

STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD

ALBERT GOYENETCHE DAIRY,	)	
a Sole Proprietorship,	)	
	)	Case No. 02-RC-1-VI
Employer,	)	
	)	
and	)	28 ALRB No. 2
	)	(March 29, 2002)
U.F.C.W. AFL-CIO CLC, FRESH	)	
FRUIT & VEGETABLE WORKERS	)	
LOCAL 1096,	)	
	)	
Petitioner.	)	
_____	)	

DECISION AND ORDER

This case is before the Agricultural Labor Relations Board (Board) on exceptions to a Regional Director’s Challenged Ballot Report. An election was held on February 22, 2002 among the agricultural employees of Albert Goyenette Dairy, a Sole Proprietorship (Employer). The tally of ballots shows that fifteen votes were cast for the Petitioner, U.F.C.W. AFL-CIO CLC, Fresh Fruit & Vegetable Workers Local 1096 (Local 1096), fourteen votes were cast for “no union,” and there was one unresolved challenged ballot. As the challenged ballot was outcome determinative, the Regional Director conducted an investigation. He issued his Challenged Ballot Report on March 8, 2002. In that report,

the Regional Director concluded that the challenge should be upheld. The Employer timely filed exceptions to the Challenged Ballot Report.

### The Challenged Ballot Report

Jose Luis Isusquiza's (Isusquiza) ballot was challenged by a Board agent because his name did not appear on the eligibility list provided by the Employer. In taking Isusquiza's declaration, the Board agent discovered information which indicated that Isusquiza might be a supervisor and, thus, ineligible to vote. As records indicated that Isusquiza indeed worked during the eligibility period, the focus of the investigation was his possible supervisory status.<sup>1</sup>

During the investigation, the Employer provided payroll records with handwritten job classifications. These records showed that Isusquiza was listed as the "Senior Herdsman," though there were no "Herdsman" listed. His salary was listed as \$3500 per month, which was \$500 more than any other employee. In a letter to the Regional Director, the Employer took the position that Isusquiza was not a supervisor and that his duties consisted of grouping cows for feeding and pregnancy status, as well as filling in for the hospital and maternity workers when they were absent.

Contradicting the Employer's position was a declaration from Isusquiza taken at the time of the challenge that indicated that he supervised other employees and gave

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<sup>1</sup> Section 1140.4(j) of the ALRA defines "supervisor" as "any individual having the 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." As the elements of the definition are listed in the disjunctive, the individual need only possess one of the above-listed indicia of authority in order to be considered a supervisor. (See, e.g., *Tsukiji Farms* (1998) 24 ALRB No. 3.)

recommendations on hiring and firing. The Regional Director also obtained declarations from three employees that indicated that they considered Isusquiza to be their foreman, that he gave them orders, and that they contacted him when they could come to work or to obtain authorization to take time off. In one instance, the employee related that he was told to check with Isusquiza when he applied for rehire. As further evidence supporting his conclusion that Isusquiza is a supervisor, the Regional Director relied on a newsletter distributed by the Employer in December 2000 that indicated that Isusquiza was being transferred from a dairy in Chino to be the new “director,” and that he would have authority over all the employees. The Regional Director also noted that Isusquiza was not on the eligibility list provided by the Employer, thus indicating that he was not considered a rank and file employee when the list was submitted.

#### The Employer’s Exceptions

In support of its exceptions, the Employer has submitted declarations from Isusquiza and Mike Goyenette (Goyenette), the son of the owner and one of the managers of the dairy. Also submitted are copies of letters sent to the Regional Director during the investigation of the challenged ballot. The Employer asserts that its supporting evidence refutes the findings of the Regional Director and asks that the Board set the matter for hearing in order to resolve the factual dispute.

In his declaration, Mike Goyenette states that the newsletter cited by the Regional Director was accurately quoted, and that it was the original intent of the Employer to have Isusquiza help manage the dairy. However, he asserts that Isusquiza did not develop the skills necessary to assume that status and was never actually assigned any supervisory duties.

Rather, his duties include only what the Employer's attorney described in a letter provided during the investigation, i.e., he groups cows by age for feeding purpose and pregnancy status and fills in for other employees when they are absent. Goyenette states that Isusquiza has never supervised the work of any other employees, recommended the hiring or firing of any employees, or authorized anyone to take time off. In addition, Goyenette states that anything requiring the exercise of independent judgment, other than routine matters, is brought to the attention of himself or his brother John Goyenette for resolution. Goyenette further states that Isusquiza was not on the eligibility list because the Employer had forwarded a list to its attorney that mistakenly assigned Isusquiza the title of "Foreman," his original title that had not been changed to reflect his actual duties.

Goyenette suggests in his declaration that any perception that Isusquiza has supervisory authority stems from the fact that he and his brother John use Isusquiza, because he is bilingual, to translate for them when they communicate with the employees. For example, he states that employees will ask for time off by making the request to Isusquiza, who will relate it to one of the Goyenettes, who will make the decision. Isusquiza will then relate the answer back to the employee. Thus, Goyenette asserts that Isusquiza merely acts as a conduit of information between management and the employees. With regard to the instance cited by the Regional Director where an employee purportedly was told to talk to Isusquiza about rehire, Goyenette provides a different version of events. In his version, he was uncomfortable talking about the issue through the only translator available at the time, a non-employee veterinarian, so he told the employee to come back when Isusquiza was there to translate.

Isusquiza, in his declaration, denies exercising any authority over hiring, firing, direction of work, discipline, or requests for time off. In addition, he states that he acts as a translator for Mike and John Goyenette when they communicate with the other employees.

## DISCUSSION

Regulation 20363, subdivision (b) (Tit. 8, Cal. Code Regs., sec. 20363, subdiv. (b)), requires that a party filing exceptions to a challenged ballot report include declarations or other documentary evidence in support of the exceptions.<sup>2</sup> Where such evidence raises material issues of fact as to the findings relied on by the Regional Director in the challenged ballot report, the Board will set the matter for an evidentiary hearing to resolve the disputed facts. (See, e.g., *Oceanview Produce Company* (1994) 20 ALRB No. 10.)<sup>3</sup>

As detailed above, the declarations submitted by the Employer in support of its exceptions contain facts which, if true, would contradict the findings relied on by the Regional Director in his Challenged Ballot Report. At this juncture, we are not concerned with the plausibility of the factual scenario presented in the Employer's declarations. Rather, under the established standard for setting a hearing in these matters, it is simply a question of whether the Employer's declarations place in dispute facts material to the Regional Director's determination of the challenge. Here, the declarations successfully raise issues of material fact that will require an evidentiary hearing to resolve.

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<sup>2</sup> There is no requirement that the evidence submitted in support of the exceptions must be restricted to that which the filing party previously provided to the Regional Director during the investigation, and the Board has accepted such "new" evidence in support of exceptions. (*Kern Valley Farms* (1977) 3 ALRB No. 4.)

<sup>3</sup> In contrast, the Board will accept the findings in a challenged ballot report if the exceptions contain only conclusory statements not supported by declarations or documentary evidence. (*Bunden Nursery, Inc.* (1988) 14 ALRB No. 18; *Sequoia Orange Co.* (1987) 13 ALRB No. 9.)

ORDER

In accord with the discussion above, it is hereby ORDERED that the challenge to the ballot of Jose Luis Isusquiza be set for hearing before an Investigative Hearing Examiner (IHE). The IHE shall take evidence on the issue of whether Mr. Isusquiza is a supervisor and, thus, ineligible to vote in the election.

DATED: March 29, 2002

GENEVIEVE A. SHIROMA, Chairwoman

GLORIA A. BARRIOS, Member

HERBERT O. MASON, Member

## CASE SUMMARY

**ALBERT GOYENETCHE DAIRY,**

A Sole Proprietorship

(U.F.C.W. AFL-CIO CLC, Fresh Fruit & Vegetable Workers Local 1096)

Case No. 02-RC-1-VI

28 ALRB No. 2

### **Background**

An election was held on February 22, 2002 among the agricultural employees of Albert Goyenette Dairy, a Sole Proprietorship (Employer). The tally of ballots shows that fifteen votes were cast for the Petitioner, U.F.C.W. AFL-CIO CLC, Fresh Fruit & Vegetable Workers Local 1096 (Local 1096), fourteen votes were cast for “no union,” and there was one unresolved challenged ballot. As the challenged ballot was outcome determinative, the Regional Director conducted an investigation. He issued his Challenged Ballot Report on March 8, 2002. In that report, the Regional Director concluded that the challenged voter was a supervisor and that, therefore, the challenge should be upheld. The Employer timely filed exceptions to the Challenged Ballot Report.

The Regional Director obtained declarations from three employees that indicated that the challenged voter gave them orders, and that they contacted him when they could come to work or to obtain authorization to take time off. The Regional Director also relied on a newsletter distributed by the Employer in December 2000 that indicated that the challenged voter was being transferred from a dairy in Chino to be the new “director,” and that he would have authority over all the employees. The Regional Director also noted that the challenged voter was not on the eligibility list provided by the Employer, thus indicating that he was not considered a rank and file employee when the list was submitted.

The Employer submitted declarations from the challenged voter and one of the managers of the dairy. Neither declaration had been presented to the Regional Director. The declarants assert that the challenged voter, while originally hired to be a supervisor, was never actually given any supervisory duties. Rather, according to the declarations, the challenged voter merely groups cows by age for feeding purposes and pregnancy status and fills in for other employees when they are absent. Furthermore, it is asserted in the declarations that any perception that the challenged voter is a supervisor stems from the fact that, because he is bilingual, he acts as a translator in relaying instructions and decisions from management.

### **BOARD DECISION**

The Board found that the Employer’s declarations place in dispute facts material to the Regional Director’s determination of the challenge and, therefore, ordered that an evidentiary hearing be set to resolve the dispute.

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