

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

VENTURA COASTAL CORPORATION) Case No. 02-RC-2-EC(R)
a.k.a.. RANCHO VAL NIES)
AND DESERT CITRUS PROPERTIES,) 28 ALRB No. 6
INC. AND BOB NIES,)
) (July 19, 2002)
Employer,)
))
and))
))
UNITED FARM WORKERS OF)
AMERICA, AFL-CIO,)
))
Petitioner.)
_____)

DECISION AND ORDER ON CHALLENGED BALLOTS

On March 29, 2002,¹ the United Farm Workers of America, AFL-CIO (UFW) filed a petition seeking to represent a bargaining unit of all the agricultural employees of Ventura Coastal Corporation aka Rancho Val Nies, Desert Citrus Properties, Inc. and Bob Nies (Employer). An election was conducted on April 5, with the initial tally of ballots showing 0 votes for the UFW, 0 votes for No Union, and 141 Unresolved Challenged Ballots. The Region challenged all 141 ballots cast in the April 5 election. One hundred six employees working in Employer’s citrus grove operation in Blythe, California, were challenged because the Regional Director was unable to determine from records furnished before the election which dates the employees had

¹ All dates to calendar year 2002, unless otherwise indicated.

worked during the eligibility period(s); eight Blythe voters were challenged on other grounds such as lack of identification; and 27 employees working at a juicing plant in Indio operated by Ventura Coastal were challenged because the Regional Director was unable to definitely determine their status as agricultural or non-agricultural employees. On May 14, the Regional Director issued the attached Challenged Ballot Report. Based on a post-election review of the Employer's payroll records, the Regional Director's report recommended that the challenges to the ballots of 106 Blythe orange grove employees be overruled. The Regional Director's Report stated that the investigation of eight other voters challenged on miscellaneous grounds was continuing, and made no recommendation as to them. The Regional Director recommended that the challenges to the 27 Indio juicing plant employees be sustained on the ground that they are not agricultural employees, a result supported by all parties.

On June 6, 2002, the Employer filed timely exceptions to the Regional Director's May 24, 2002 Report on Challenged ballots. The exceptions are addressed almost exclusively to the recommendation to overrule the challenges to the Blythe workforce based on Employer's position that the great majority of the Blythe grove employees were employees of Gilbert Gomez, whom Employer contends is a custom harvester.

The Employer also contended that its payroll records did not support the Regional Director's recommendation that 23 voters were eligible because they had worked in the payroll period preceding the election. On June 24, the Board ordered the

Regional Director to file a supplemental report addressing this contention. On July 1, the Regional Director issued his Supplemental Report on Challenged Ballots, finding 22 of the 23 eligible. On July 3, Employer withdrew this portion of its exceptions.

On July 9, 2002, the Regional Director issued his Second Supplemental Report on Challenged Ballots addressing the eight remaining unresolved challenges. The Second Supplemental Report recommended overruling four and sustaining four of the eight remaining unresolved challenges. On July 11, Employer filed a reply, contending that the Regional Director's recommendation to overrule the challenges to four voters was incorrect because none had ever been employed by the employer named in the representation petition and/or were employees of a custom harvester.

The Agricultural Labor Relations Board has reviewed the Initial and Supplemental Reports on Challenged Ballots in light of the exceptions filed by the Employer and the Response filed by the United Farm Workers and affirms the Regional Director's recommendations.

Employer's Contentions Regarding Employers Named in Petition

Employer contends in its exceptions that the petition for election named only Ventura Coastal Corporation as the employer and that Ventura Coastal Corporation and Desert Citrus Properties are completely separate employers, and that Ventura Coastal Corporation has no employees in Blythe. Employer further contends that Bob Nies and Rancho Val Nies are not legal entities. Employer provided no declarations or

documentary evidence in support of its assertions that Ventura Coastal Corporation and Desert Citrus Properties are separate employing entities.

Employer admits the petition identified Desert Citrus Properties as an “aka” of Ventura Coastal Corporation, but asserts that this is insufficient to name Desert Citrus Properties as an employer. The Board disagrees, and finds that Desert Citrus Properties, Inc. was adequately named as an employer and was on notice of the petition. The issue of which of the name or names stated in the petition properly identifies the Employing entity has been raised in the Employer’s election objections, and will be deferred to the objections stage of this case.

Custom Harvester Status of Gilbert Gomez

The Employer’s major contention is that of the approximately 114 orange grove employees in Blythe who voted, the overwhelming majority, 100, who worked for Gilbert Gomez,² are ineligible because Gilbert Gomez is a custom harvester.³

Gilbert Gomez provides employees to perform citrus harvesting. Employer contends that Gilbert Gomez is a custom harvester because under the agreement between Employer and Gomez, Gomez provides all equipment, arranges for hauling of the oranges after they are harvested, has full control of hiring, discipline, and firing employees, and controls day-to-day harvesting of oranges. Employer argues that because

² The payroll records submitted by Employer show the Gilbert Gomez employees as being employed by an entity identified as Bertha A. Gomez.

³ Employer contends that the seven employees hired by Desert Citrus Properties in Blythe cannot be included in the unit because the original petition sought to represent only employees of Ventura Coastal Corporation. The Employer’s objections raised the issue of whether the petition, which alleged both Ventura Coastal Corporation and Desert Citrus Properties as parts of the employing entity, correctly identified the employer. The Board will defer dealing with this issue to the objections stage of this proceeding.

Gomez is compensated based on the amount harvested, Gomez can increase his profit by his own actions. Employer contends that this is sufficient to establish that Gomez is a custom harvester and not a mere farm labor contractor.

Employer submitted a declaration by Desert Citrus Properties General Manager Fred Strickland in support of its exceptions. Strickland states that Gomez provides all costly equipment for the harvesting, arranges for hauling, and controls hiring, discipline, and firing. Strickland's declaration contends that Gomez therefore has substantial control over his own profitability, because he can control the efficiency of harvesting.

Employer submitted the contract between itself and Gomez. The contract recites that Gomez is a custom harvester. The contract provides that Gomez has responsibility for harvesting, will provide all equipment, arrange for hauling of citrus from the property, control all employees, and exercise day-to-day control over harvesting operations. The contract's only provision for compensation to Gomez is for a 45 percent override on a bin rate of \$20 for pickers, \$100 per day for a foreman and \$80 per day for a forklift truck driver, and a separate charge of \$2.50 per bin for forklift rental. No compensation is provided by the contract for Gomez's services in arranging or performing hauling or day-to-day control of harvesting, or any other service.

Employer contends that the inclusion of bin rates shows that Gomez has entrepreneurial control over his own profits. Contrary to Employer, the bin rates are stated in the contract as a wage rate paid to laborers, with an override charged to the

Employer, not a rate paid Gomez to from which he may negotiate a pay rate with the employees, retaining the difference as its profit. It is therefore different than the situation in *Tony Lomanto* (1982) 8 ALRB No. 44, where the bin rate was the gross payment to the custom harvester, who had to negotiate a wage rate with his employees. Under the Employer's contract with Gilbert Gomez, the employees and their union would have to negotiate directly with the Employer. Bargaining with Gomez would be ineffective, since the Employer has the dominant role in setting compensation for both Gomez and the employees Gomez provides.

The Board has found stronger evidence offered in support of a contention that a farm labor contractor was a custom harvester to be insufficient. (*San Joaquin Tomato Growers* (1993) 19 ALRB No. 4; (1994) 20 ALRB No. 4.) The characteristics of Gilbert Gomez' operation relied upon to establish his custom harvester status fall far short of what the Board found failed to establish custom harvester status in *San Joaquin Tomato Growers, supra*.

In *San Joaquin Tomato Growers*, the Board found that equipment valued at \$400,000 replacement cost did not establish that the alleged custom harvester was providing costly or specialized equipment. Employer's exceptions do not even claim that Gomez provides any specialized equipment and no cost figures are provided. The Board emphatically rejected the contention that control over hiring, firing and discipline establishes custom harvester status, noting that they are typical farm labor contractor functions. The contract provides that Gomez has day-to-day control over harvesting

oranges. The board in *San Joaquin Tomato Growers* indicated that it might consider day-to-day control of harvesting significant if the alleged farm labor contractor had sole control over the selection and timing of the picking of tomatoes. This characteristic is much less important in oranges, which can stay on the tree for extended periods⁴ than in tomatoes, where date of picking is much more critical. There is no claim that risk of loss, much less title to the produce, passes to Gomez. Therefore, even assuming the facts are as alleged by the Employer, under *San Joaquin Tomato Growers, supra*, Gomez is clearly a farm labor contactor, not a custom harvester.

Some characteristics not present in *San Joaquin Tomato Growers*, such as control of cultural practices, packing, and hauling, have been considered in evaluating custom harvester status. There is no claim or evidence that Gomez manages the cultural practices or packs.

The contract between Employer and Gomez provides that Gomez will provide or arrange for the hauling of the oranges. In *Kotchevar Brothers* (1976) 2 ALRB No. 45, the Board found this to be a significant indication of custom harvester status where it existed in conjunction with the providing of trucking or harvesting equipment. As further discussed in *Tony Lomanto* (1982) 8 ALRB No. 44, *Kotchevar* involved the trucking operations as a significant additional part of the custom harvester's business, *Kotchevar* providing the equipment and taking on responsibility for hauling a highly perishable crop, grapes, to the buyers and being compensated for such hauling services.

⁴ *Agricultural Labor Relations Bd. v. Exeter Packers* (1986) 184 Cal.App. 3d 486.

The contract between Employer and Gilbert Gomez, unlike that in *Kotchevar*, does not provide any compensation to Gomez for either arranging or providing the trucking. Gomez' compensation is limited to an override based on labor cost and a charge for a forklift required to conduct picking.

The more extensive discussion of the custom harvester issue in *Napa Valley Vineyards* (1977) 3 ALRB No. 22 makes clear that both duties broader than the provision of labor and compensation for those broader duties must be present for an entity that would otherwise be a mere farm labor contractor to be a custom harvester. While *Napa Valley Vineyards* requires that the "whole activity" of the alleged custom harvester be considered, the exceptions in the case show insufficient evidence to establish any issue of fact that whole activity of Gilbert Gomez in Employer's operation is other than that of a labor contractor.

Because Gomez' compensation is based solely on an override of 45 percent of assigned costs for labor services per bin for pickers, a foreman, and a forklift operator, plus rent for a forklift, there is no separate compensation for the alleged responsibility of arranging or providing hauling. This situation is therefore not like *Napa Valley Vineyards* and *Kotchevar*, where a totality of the services, not the mere provision of harvest labor, was the basis for compensation and gave the contractor the status of a custom harvester.

Section 1140.4(c) of the Agricultural Labor Relations Act provides:

The term "agricultural employer" shall be liberally construed to include any person acting directly or indirectly in the interest of an employer in relation

to an agricultural employee, any individual grower, corporate grower, cooperative grower, harvesting association, hiring association, land management group, any association of persons or cooperatives engaged in agriculture, and shall include any person who owns or leases or manages land used for agricultural purposes, *but shall exclude any person supplying agricultural workers to an employer, and farm labor contractor as defined in [Labor Code] Section 1682, and any person functioning in the capacity of a labor contractor. The employer engaging such labor contractor or person shall be deemed the employer for all purposes under this part.* (Emphasis added.)

Labor Code section 1682(b) and (e) provide in pertinent part:

(b) “Farm labor contractor” designates any person who, for a fee, employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person, or who, recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing or producing of farm products, and who, for a fee, provides in connection therewith any of the following services: furnishes board, lodging, or transportation of those workers; supervises, times, checks, counts, weighs, or otherwise directs or measures their work; or disburses wage payments to these persons.

(e) Fee shall mean (1) the difference between the amount received by a labor contractor and the amount paid out by him or her to persons employed to render personal services to, for or under the direction of a third person; (2) any valuable consideration received or to be received by a farm labor contractor for or in connection with any of the services described above, and shall include the difference between any amount received or to be received by him or her, and the amount paid out by him or her, for or in connection with the rendering of such services.

The Board in *Napa Valley Vineyards* noted that characteristically, the “fee” paid to labor contractors is in the form of a percentage or “override” on the wages paid to the workers. Even if Gomez did receive some of his income from paying the harvesters less than the bin rate paid him by Employer, that compensation would still be a “fee” paid to a farm labor contractor under Labor Code section 1682(e).

Finally, 29 C.F.R. sec. 780.331(c) describes a custom harvester as one who performs “custom work” who typically has a substantial investment in equipment and his business decisions and judgments materially affect his opportunity for profit or loss.

The facts presented in Employer’s exceptions do not raise any issue of fact under the standards adopted by the Board. Under the contract, Gomez’ compensation undoubtedly comes from the 45 percent override on the bin rate and foreman and forklift driver rate. Further, whether Gomez’ compensation comes from the override or from paying his employees less than the full bin rate he receives from the Employer, it is a “fee” for being a labor contractor within the meaning of California statutes.

The record does not suggest any issue of fact that would make Gomez a custom harvester as defined by the United States Department of Labor in 29 C.F.R. sec. 780.331(c). For the reasons stated above, Gomez’ business decisions do not appear to materially affect his compensation. The contract’s provision for a charge per bin loaded to pay rental on a forklift strongly suggest that the equipment provided by Gomez is not extensive or highly specialized, another significant characteristic of a custom harvester under 29 C.F.R. sec. 780.331(c). Additionally, while 29 C.F.R. sec. 780.331 allows a labor contractor like Gomez to be treated as an employer, the provisions of Labor Code section 1140.4(c) preclude the Board from treating any labor provider with Gomez’ characteristics as an employer.

The Employer’s other support for the custom harvester contention is that the Board had issued an order in an unfair labor practice proceeding, finding Gilbert

Gomez to be an agricultural employer. There is no finding that Gomez is a custom harvester.

An allegation in an unfair labor practice complaint naming Gilbert Gomez, together with Ventura Coastal Corporation and Desert Citrus Properties, as an agricultural employer was made final on June 11, 2002, based solely on Gilbert Gomez' having failed to file an answer. However, findings resulting from the failure to file an answer are not binding on the Board in future cases. (*Bruce Church, Inc.* (1981) 7 ALRB No. 20.)

Because nothing has been presented that would raise any substantial question of fact as to Gilbert Gomez status as a custom harvester, the Board finds no issue of fact requiring a hearing under Board regulations, denies the exceptions and adopts the Regional Director's recommendation that the challenges to the ballots of the employees named as eligible voters in the Regional Director's Reports on Challenged Ballots be overruled.

Challenged Ballots Addressed in Regional Director's Second Supplemental Report on Challenged Ballots

The Regional Director's Second Supplemental Report on Challenged Ballots recommended overruling four and sustaining four challenged ballots. The Regional Director recommended that the challenges to the ballots of Crescencio Armijo De Ordaz and Sara Rojas be overruled on the ground that his investigation had established that they were employed during the payroll period for eligibility at

Employer's operations through Valley Farm Labor Service, a labor contractor. The Regional Director further recommended that the challenges to the ballots of Maria Guadalupe Cevallos and Enedina Medina, both employed through Gilbert Gomez, be overruled. Maria Guadalupe Cevallos would have worked during the eligibility period but was unable to report because of illness. During the investigation, Enedina Medina produced sufficient identification to establish that she was the person shown on the Gomez payroll records as working under that name.

The Employer filed a reply to the Second Supplemental Report on Challenged Ballots. The Employer did not dispute the Regional Director's findings that the Crescencia Armijo De Ordaz and Sara Rojas worked during the eligibility period, that Maria Guadalupe Cevallos would have worked but for illness, and that Enedina Medina who cast a challenged ballot was the same person shown in the Gomez payroll records as working during the eligibility period. Employer contends that Maria Guadalupe Cevallos and Enedina Medina were employed by Gilbert Gomez, and are ineligible because Gomez is a custom harvester. Employer further contends that none of the employees were employed by Ventura Coastal Corporation, the only employer named in the petition. The Employer does not dispute the Regional Director's recommendation that the other four employees are ineligible. The Union did not file a response to the Second Supplemental Report on Challenged Ballots.

For the reasons stated above, the Board affirms the Regional Director's recommendation that the challenges to the ballots of Crescencia Armijo De Ordaz and

Sara Rojas, Maria Guadalupe Cevallos and Enedina Medina be overruled, and that the challenges to the four remaining employees addressed in the Second Supplemental Report on Challenged Ballots be sustained.

ORDER

In accordance with the discussion above, the Board hereby affirms the overruling and sustaining of challenges to ballots as set forth in the Regional Director's Report on Challenged Ballots, Supplemental Report on Challenged Ballots, and Second Supplemental Report on Challenged Ballots, and orders that the ballots cast by the voters which the Regional Director recommended be overruled be opened and counted. The Regional Director shall open and count these ballots and thereafter issue a revised tally of ballots.

DATED: July , 2002

GENEVIEVE A. SHIROMA, Chairwoman

GLORIA A. BARRIOS, Member

HERBERT O. MASON, Member

CASE SUMMARY

Ventura Coastal Corporation aka
Rancho Val Nies and Desert Citrus
Properties, Inc. and Bob Nies
(United Farm Workers of America)

28 NLRB No. 6
Case No. 02-RC-02-EC(R)

Background

The Employer operates citrus groves in Blythe, primarily with employees provided by two labor contractors, and operates a juicing plant in Indio. In the election, the Region challenged all ballots cast; the Blythe citrus employees because the Region could not determine from the payroll records provided whether the employees had worked in the eligibility period, and the Indio juice plant employees because the Region was unable to confirm their status as non-agricultural employees before the election was conducted.

Regional Director's Reports on Challenged Ballots

The Regional Director, as to the Blythe citrus employees, recommended that 106 challenges be overruled, based on having received records and declarations showing they had worked during the eligibility period. The Regional Director recommended that eight Blythe ballots be investigated further. The Regional Director sustained the challenges to all the Indio juicing plant employees' ballots. The Regional Director issued a supplemental report on 23 ballots in response to the Employer's contentions in its exceptions that these employees the Regional Director had found eligible did not appear on its payrolls for the eligibility period. The Regional Director recommended that 22 challenges be overruled and one sustained. The Regional Director issued a Second Supplemental Report on challenged ballots, recommending that the challenges to four of the eight remaining employees be overruled and four sustained.

Board Decision

The Board adopted the Regional Director's Reports on Challenged Ballots. It rejected Employer's contention that approximately 100 of the Blythe employees who were employed by Gilbert Gomez, were ineligible on the basis that Gomez was a custom harvester. Employer contended that the Gomez employees were therefore ineligible.

The Board found that Gomez's contract for the most part called for him to provide only services customarily performed by labor contractors. Employer contended that the contract called for Gomez to provide all costly equipment, provide or arrange for hauling and to exercise day-to-day control over the harvesting of oranges. The Board found Employer failed to raise a material issue of fact that Gomez was a custom harvester because the contract's only provision of compensation to Gomez was based on harvest

labor wage costs plus a percentage override. No evidence was presented that any equipment provided by Gomez was expensive or specialized. No compensation for providing or arranging hauling services was provided in the contract, indicating that such services were not a significant part of the services to be provided under the contract. While the contract purported to give Gomez day-to-day control over the harvesting of oranges, the Board noted that in the crop involved, date of picking is not critical. The Board therefore overruled the Employer's exceptions, and adopted the Regional Director's recommendations.

* * *

This Case Summary is furnished for information only, and is not the Official Statement of the case, or of the ALRB.

STATE OF CALIFORNIA
 BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD
 EL CENTRO REGIONAL OFFICE

In the Matter of:)	CASE NO. 02-RC-2-EC(R)
)	
VENTURA COASTAL CORPORATION)	
a.k.a. RANCHO VAL NIES and)	
DESERT CITRUS PROPERTIES, INC.)	
and BOB NEIS,)	
)	
Employer,)	
)	
and)	
)	REGIONAL DIRECTOR'S REPORT
UNITED FARM WORKERS)	<u>ON CHALLENGED BALLOTS</u>
OF AMERICA, AFL-CIO,)	
)	
Petitioner.)	
_____)	

INTRODUCTION

On March 29, 2002, the United Farm Workers of America, AFL-CIO (Union) filed a Petition for Certification seeking to represent a bargaining unit of all agricultural employees of the above-captioned employer in Riverside County. An election was conducted by the Agricultural Labor Relations Board (ALRB or Board) on April 5, 2002. The results of the initial Tally of Ballots are:

UFW.....	0
No Union.....	0
Unresolved Challenged Ballots...	141
Total.....	141

Since the challenged ballots were sufficient in number to determine the outcome of the election, the Regional Director conducted an investigation of the eligibility of the

challenged voters pursuant to Section 20363 (a) of the Board's Regulations. All parties were given an opportunity to present evidence on each of the challenges.

On April 8, 2002 the Regional Director sent a letter to the Employer and the Union requesting that they provide their position regarding the eligibility of each challenged voter and the evidence to support their position. The Regional Director also requested that they submit documents such as payroll records and declarations, as well as any other evidence, which provides information to support their position. On April 9, 2002 the Regional Director sent a letter to each of the challenged voters, who provided an address to a Board agent on election day, requesting that they provide paycheck stubs to show when they worked in March 2002. The Regional Director has carefully considered all of the evidence submitted by the parties and the challenged voters, and hereby issues the following report.

INDIO FACILITY

In its election petition, the Union alleged that the unit sought did not include all of the employer's agricultural employees in the State of California, that the employer employed agricultural employees in two or more non-contiguous geographical areas, that the employer had packing sheds or cooling facilities which were located off the farm, and that the Union did not want these agricultural employees included in the unit sought. Although the Employer's response to the petition did not provide any information about a packing shed or cooling facility, Board agents were eventually informed by the parties about a facility located in Indio in Riverside County where employees employed by the Employer were working. Although the parties indicated that they wanted the election petition limited to the employees working at Rancho Val Nies in Blythe in Riverside County, Board agents attempted to obtain evidence from the employer regarding the Indio facility. The Employer failed to submit sufficient evidence,

prior to the election, to indicate whether or not the employees at the Indio facility were agricultural or non-agricultural. Consequently, Board agents challenged all of the prospective voters working at the Indio facility so that this issue could be more fully investigated after the election.

After the election, the Employer submitted a declaration from Michael Stuebing, Vice-President of Operations for Ventura Coastal Corporation, which provided a description of what was done at the Indio facility; Board agents interviewed some of the employees who worked at said facility, and both parties proffered legal arguments, all which indicate that the employees working at the Indio facility are non-agricultural. The declaration of Michael Stuebing is attached hereto, marked as Exhibit 1, and is incorporated herein by this reference. The information received by Board agents during the employee interviews is consistent with the information provided in Mr. Stuebing's declaration. The legal authority cited by the parties is on point and persuasive. See: Di Giorgio Fruit Corp. (1948) 80 NLRB 853; Camsco Produce (1990) 297 NLRB 905; W.P. McDonald Corp. (1949) 83 NLRB 427; and H.F. Byrd, Inc. (1953) 103 NLRB 1278.

I have concluded that the prospective voters, who worked at the Employer's Indio facility, located at 39-485 Dillon Road in Indio, California, are not agricultural employees, and therefore they are not eligible to vote in the April 5, 2002 election.

I recommend that the challenge to the following prospective voters be sustained and that their ballots not be counted.

Ana Vilma Gonzalez
Jose Eduviges Carrasco
Marisol Ramírez
Adolfo Garcia
Maria Carmen Miranda
Mariana Jesús Gomez Sánchez

Benjamín Moreno Cano
George Hall, Jr.
Griselda J. Robledo
Jose Mendoza Grimaldo
Enos Perez Alvarez
Maria Anda Carrasco
Ubaldo Terrazas
Jose Martinez J.
Beatriz C. Hernández
Carlos H. Luna
Ignacio Reyes Jiménez
Oswaldo Espinoza Horta
Randolph L. Davidhizer
Ruben Vasquez Reynoso
Joseph Phillip Bloch
Ignacio Juárez
Eliseo De La Cruz
David Montoya Silva
Cristina Bautista
Jose Jaime Sánchez
Lucia Prado Castellanos
Steven Edgar Legasey

BLYTHE EMPLOYEES

The Union's election petition was filed on March 29, 2002. In its response to said petition, the Employer did not state the duration and timing of the payroll period under which the employees sought in the petition are paid, e.g., daily, weekly or bimonthly. The Employer did indicate that Friday is the day of the week on which the payroll period ends. In its response, the Employer submitted documents, which purport to show the names of employees employed each day during the payroll period immediately preceding the filing of the petition; but some documents contained names of employees without the dates on which they worked, and other documents contained names of employees and showed March 25 and March 26, 2002 as the dates they worked.

Although Board agents attempted to obtain additional information from the Employer regarding the appropriate applicable payroll period and to clarify the incomplete and confusing information contained in the Employer's response, they were not informed until the pre-election conference on April 4, 2002 that the payroll periods immediately preceding the

filing of the petition are as follows: March 16, 2002 through March 22, 2002 for employees paid by Bertha Gomez; March 17, 2002 through March 23, 2002 for employees paid by Desert Citrus Properties, Inc.; and March 20, 2002 through March 26, 2002 for employees paid by Valley Farm Labor Service. Consequently, agricultural employees who worked for the Employer during those payroll periods are eligible to vote in this election.

During the challenged ballot investigation, Board agents obtained, and the parties provided, payroll information and declarations indicating which prospective voters worked for the Employer during the above-mentioned payroll periods. I have concluded that the following agricultural employees worked for the Employer during the payroll periods immediately preceding the filing of the petition and therefore they are eligible to vote in the April 5, 2002 election.

I recommend that the challenge to the following prospective voters be overruled and that their ballots be counted.

Fidel Gamez Luna
Maximino Sánchez
Arturo Fuentes Zamudio
Ruben Garcia Dealba
Sixta Gonzalez Gonzalez
Jorge Gonzalez Alcala
Alfredo Herrera Lara
Josefina Rangel
Virginia Flores Garcia
Martín Chavez Rangel
Fernando Villanueva
Oliverio Trejo Cruz
Ponciano Cisneros Rangel
Martín Chavez
J. Angel Garcia Chavez
J. Carmen Garcia Chavez
Margarita Chavez de Rangel
Marcela Rangel Chavez
Jorge Perez Ortega
Jesús Maria Cuevas Mendez
Maria De Jesús Alvarez
Arturo Luna
Fidel Rangel Chavez

Maria Teresa Medina
Efren Villagomez Morales
Jaime Pena Castro
Felipe Jesús Garcia
Paulino Macias Ayala
Ana Lule
Primitivo Garcia Perez
Pedro Rangel Chavez
Jaime Cevallos Herrera
Rafael H. Bejarano
Maria Del Consuelo Gamez
Maricela Gamez Pena
Maria Leticia Magana
Lilia Gomez De Villanueva
Luis Estrada Cardenas
Benjamín G. Andrade
Moisés Medina Chavez
Alberto Gamez Perez
Jesús Alvarez Luna
Juan Magana Luna
Miguel Chavez Garcia
Ignacio Chavez Martinez
Norberto Chavez Medina
Abel Perez Ortega
Eulogio Alvarez
Miguel Perez Ortega
Miguel C. Pena
Gerardo Magana
Jose Guerra Reyes
Alfonso Pena Castro
Fernando Garcia Gamez
Ludivina Cepeda
Rito Sanchez
Pedro Magana
Alma Rosa Peña
Rigoberto Perez Garcia
Manuel Luna Soto
Raul Trujillo Bravo
Eloy Gomez Magaña
Beatriz Rangel
Raul Hernández Romero
Miguel Duarte Gomez
Manuel Covarrubias
Respicio Ortega Perez
Rosa Maria Rangel
Luis Manuel Rangel

Elena Rangel
Roberto Rangel Madrigal
Hector Rojas
Natanhael Garcia Gomez
Luis C. Medina
Carlos Rangel Chavez
Beatriz Rangel Bedolla
Rosa Elvia Romero
Maria G. Medina
Maria Dolores Chavez
Gildardo Gomez
Ana Bertha Rangel
Angelica G. Magana
Patricia Pena
Esperanza Pena
Maria Elena Gomez Andrade
Maria Candelaria
Maria De Jesús N. Andrade
Blanca Elida Alvarado
Maria Leticia Gomez Garcia
Luis Mojica
Raquel Gamez Mojica
David Pineda Barocio
Miguel Luna Perez
Jose Refugio Gomez
Estela Pena
Agustín Rangel Chavez
Hermila Rangel
Ramon Zepeda Santiago
Garibay Precilliano Muniz
Carlos Garibay Romero
Raul Mojica Prado
Rodolfo Gomez Garcia
Arturo B. Trujillo
Lorenzo Bravo Trujillo

There is insufficient evidence to show that Natividad Barajas worked for the Employer during the payroll period immediately preceding the filing of the petition. Therefore, I recommend that the challenge to Natividad Barajas be sustained and that his ballot not be counted.

UNRESOLVED CHALLENGED BALLOTS

There are eight unresolved challenged ballots. They are the ballots of five prospective voters who did not present identification in order to vote on April 5, 2002: San Juana Segovia, Maria Esther Garcia, Carmen Barajas, Abel Rodriguez and Enedina Medina; the ballots of two prospective voters who were challenged on the grounds that they were not employed during the applicable payroll period: Cresencia Armijo De Ordaz and Sara Rojas; and the ballot of Maria Guadalupe Cevallos, who was not working due to an injury or illness. The investigation of these challenges is in progress. Consequently, no recommendation is being made at this time concerning these ballots.

CONCLUSION

The conclusions and recommendations of the Regional Director as set forth in this report shall be final unless exceptions are filed with the Executive Secretary in accordance with Section 20363 of the Board's Regulations.

Dated this 24th day of May 2002 in El Centro, California.

Respectfully submitted by,

Kerry M. Donnell
Regional Director
Agricultural Labor Relations Board
319 Waterman Avenue
El Centro, CA 92243

I have concluded that the agricultural employees, who are listed below, worked for the Employer during the payroll periods immediately preceding the filing of the petition and that they are eligible to vote in the April 5, 2002 election, and I recommend that the challenge to their votes be overruled and that their ballots be counted. My recommendation to open and count these ballots is based on the following. There is evidence in declarations which indicates that all of these individuals, except Jesus Alvarez Luna and Beatriz Rangel Bedolla, worked between March 16, 2002 and March 22, 2002 for Bertha Gomez. There is evidence in declarations which indicates that Jesus Alvarez Luna worked for Desert Citrus between March 17, 2002 and March 23, 2002, and that Beatriz Rangel Bedolla worked for Valley Farm between March 20, 2002 and March 26, 2002. There is also evidence in declarations concerning the social security numbers and addresses of some of these individuals. This information was very helpful in reconciling any differences in the names of some voters as they appeared on different documents. In addition to the evidence in the declarations, there are payroll records for all of these individuals, except Lorenzo Bravo Trujillo and Ponciano Cisneros Rangel, which show that they worked during the applicable payroll period for the indicated company. Said payroll records are attached to this report.

I recommend that the challenge to the following prospective voters be overruled and that their ballots be counted:

Lorenzo Bravo Trujillo - evidence in declaration indicates he worked for Bertha Gomez from 2-1-02 to 4-5-02.

Ponciano Cisneros Rangel - evidence in declaration indicates he worked for Gomez FLC from February 2002 to April 4, 2002.

Martin Chavez Rangel - social security # on challenged ballot declaration matches social security # on attached payroll record.

Marcela Rangel Chavez - social security # on challenged ballot declaration matches social security # on attached payroll record.

Jorge Perez Ortega - see attached payroll record.

Rigoberto Perez Garcia - see attached payroll record.

Manuel Covarrubias - social security # on challenged ballot declaration matches social security # on attached payroll record.

Carlos Rangel Chavez - social security # on challenged ballot declaration matches social security # on attached payroll record.

Maria Del Consuelo Gamez - social security # on challenged ballot declaration matches social security # on attached payroll record.

Jesus Alvarez Luna - address on challenged ballot declaration appears to match address on attached payroll record, and both the payroll record and the declaration indicate that this person worked for Ventura Coastal Corporation / Desert Citrus Properties.

Rito Sanchez - social security # on challenged ballot declaration matches social security # on attached payroll record.

Pedro Magana - social security # on challenged ballot declaration matches social security # on attached payroll record.

Beatriz Rangel Bedolla - address on challenged ballot declaration matches address on attached payroll record.

Maria Candelaria - social security # on challenged ballot declaration matches social security # on attached payroll record.

Maria Leticia Gomez Garcia - social security # on challenged ballot declaration matches social security # on attached payroll record.

David Pineda Barocio - social security # on challenged ballot declaration matches social security # on attached payroll record.

Estela Pena - social security # on challenged ballot declaration matches social security # on attached payroll record.

Hermila Rangel - social security # on challenged ballot declaration matches social security # on attached payroll record.

Ramon Zepeda Santiago - see attached payroll record.

Rodolfo Gomez Garcia - This voter signed the name Rodolfo Garcia on the challenged ballot declaration. The Board Agent wrote the name Rodolfo Gomez Garcia on the challenge list. Documents prepared by the Employer show the name as Rodolfo G. Gamez. The address on the challenged ballot declaration signed by Rodolfo Garcia is the same as the address on the April 3, 2002 document prepared by the Employer, which is attached.

I have not made a recommendation concerning the ballots of **Maria Guadalupe Cevallos** and **Carmen Barajas** for the reasons set forth in the challenged ballot report issued on May 24, 2002. The investigation of the unresolved challenged ballots will be completed soon. My supplemental report concerning the unresolved challenged ballots will address the Employer's allegation that Maria Guadalupe Cevallos and Carmen Barajas did not work during the eligibility period, and will include the bases for my recommendation, and supporting payroll records and declarations.

The name **Artura Trujillo** does not appear on the challenged ballot list.

Respectfully submitted by,

Kerry M. Donnell
Regional Director
Agricultural Labor Relations Board
319 Waterman Avenue
El Centro, CA 92243

STATE OF CALIFORNIA
 BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD
 EL CENTRO REGIONAL OFFICE

In the Matter of:)	CASE NO. 02-RC-2-EC(R)
)	
VENTURA COASTAL CORPORATION)	
a.k.a. RANCHO VAL NIES and)	
DESERT CITRUS PROPERTIES, INC.)	
and BOB NEIS,)	
)	
Employer,)	
)	
and)	
)	REGIONAL DIRECTOR'S SECOND
UNITED FARM WORKERS)	SUPPLEMENTAL REPORT ON
OF AMERICA, AFL-CIO,)	<u>CHALLENGED BALLOTS</u>
)	
Petitioner.)	
_____)	

INTRODUCTION

On March 29, 2002, the United Farm Workers of America, AFL-CIO (Union) filed a Petition for Certification seeking to represent a bargaining unit of all agricultural employees of the above-captioned employer in Riverside County. An election was conducted by the Agricultural Labor Relations Board (ALRB or Board) on April 5, 2002. The results of the initial Tally of Ballots are:

...UFW.....	0
No Union.....	0
Unresolved Challenged Ballots....	141
Total	141

Since the challenged ballots were sufficient in number to determine the outcome of the election, the Regional Director conducted an investigation of the eligibility of the challenged voters pursuant to Section 20363 (a) of the Board's Regulations.

On May 24, 2002, a Regional Director's Report On Challenged Ballots was issued, and on July 1, 2002, a Regional Director's Supplemental Report On Challenged Ballots was issued. In said reports a recommendation has been made on all of the challenged ballots, except for eight. These eight unresolved challenged ballots are the ballots of five prospective voters who did not present identification in order to vote on April 5, 2002: San Juana Segovia, Maria Esther Garcia, Carmen Barajas, Abel Rodriguez and Enedina Medina; the ballots of two prospective voters who were challenged on the grounds that they were not employed during the applicable payroll period: Cresencia Armijo De Ordaz and Sara Rojas; and the ballot of Maria Guadalupe Cevallos, who was not working due to an injury or illness. An investigation of these challenges has been conducted since and the Regional Director has carefully considered all of the evidence submitted by the parties and the challenged voters, and hereby issues the following report and recommendations.

THE EIGHT UNRESOLVED CHALLENGED BALLOTS

The payroll periods immediately preceding the filing of the representation petition are as follows: March 16, 2002 through March 22, 2002 for employees paid by Bertha Gomez; March 17, 2002 through March 23, 2002 for employees paid by Desert Citrus Properties, and March 20, 2002 through March 26, 2002 for employees paid by Valley Farm Labor Service. Consequently, agricultural employees who worked for the Employer during those payroll periods are eligible to vote in this election.

I have concluded that **Cresencia Armijo De Ordaz** and **Sara Rojas** worked for the Employer during the payroll period immediately preceding the filing of the petition and that they are eligible to vote in the April 5, 2002 election, and I recommend that the challenge to their votes be overruled and that their ballots be counted. My recommendation to open and count these ballots is based on the following. There is evidence in declarations which indicates that Cresencia Armijo De Ordaz and Sara Rojas worked for Valley Farm Labor Service between March 20, 2002 and March 26, 2002. In addition to the evidence in the declarations, the Employer has indicated that they worked for Valley Farm Labor Service between March 20, 2002 and March 26, 2002 (See page 6 of the “Employer’s Response To Petition For Certification”, which is attached hereto). There is also evidence in a declaration concerning the address of Sara Rojas. This information was helpful in reconciling any differences in her name as it appeared on different documents.

I have concluded that **Maria Guadalupe Cevallos** would have worked for the Employer during the payroll period immediately preceding the filing of the petition and that she is eligible to vote in the April 5, 2002 election, and I recommend that the challenge to her vote be overruled and that her ballot be counted. My recommendation to open and count her ballot is based on the following. There is evidence in declarations which indicates that Maria Guadalupe Cevallos worked for Bertha Gomez between March 3, 2002 and March 9, 2002 (see attached payroll record); that she was placed on a short layoff, due to a temporary lack of work, by supervisor Fermin Gamez and was told that she would be notified when work resumed; that while she was on layoff she became ill and was hospitalized on March 11, 2002; that on March 12, 2002 supervisor Fermin Gamez called her home and told her husband that he and she should report for work on March 13, 2002; that she was disabled and unable to work during the

period from March 11, 2002 through April 7, 2002; that she returned to work for Bertha Gomez on April 8, 2002 at the same work site where she had worked between March 3, 2002 and March 9, 2002 and that she worked in the crew of Liduvina Gamez. An individual is eligible to vote if he or she would have worked during the eligibility period but for an absence due to illness, and there is a reasonable expectation that the employee will return to work. See: Rod McLellan Co. (1977) 3 ALRB No. 6; Valdora Produce Co. (1977) 3 ALRB No. 8 and Cocopah Nurseries, Inc. (2001) 27 ALRB No. 3. The evidence here indicates that Maria Guadalupe Cevallos would have worked between March 16, 2002 and March 22, 2002 but for an absence due to an illness, and that she did in fact return to work.

I have concluded that **Enedina Medina** worked for the Employer during the payroll period immediately preceding the filing of the petition, and that during the challenged ballot investigation she presented sufficient evidence concerning her identification to show that she is the same person who both worked during the eligibility period and who came to vote at the April 5, 2002 election. I recommend that the challenge to her vote be overruled and that her ballot be counted. My recommendation to open and count her ballot is based on the following. There is evidence in declarations which indicates that Enedina Medina worked between March 16, 2002 and March 22, 2002 for Bertha Gomez. There is also evidence in declarations, in her California driver's license, in her Social Security card and in her Resident Alien identification card concerning her social security number and address. This information was very helpful in reconciling any differences in her name as it appeared on different documents. In addition to the evidence in the declarations, there are payroll records which show that she worked during the applicable payroll period for the indicated company. Said payroll records are attached to this report.

I recommend that the challenges to **San Juana Segovia, Maria Esther Garcia, Carmen Barajas** and **Abel Rodriguez** be sustained and that their ballots not be counted. My recommendation is based on the following.

There is evidence in declarations and payroll records (which are attached) which indicates that San Juana Segovia, Carmen Barajas and Abel Rodriguez worked between March 16, 2002 and March 22, 2002 for Bertha Gomez. There is also evidence in declarations and payroll records concerning the social security numbers and addresses of these individuals. This information was very helpful in reconciling any differences in the names of some voters as they appeared on different documents. There is insufficient evidence to show that Maria Esther Garcia worked for the Employer during the payroll period immediately preceding the filing of the petition.

Section 20355 (c) of the Board's Regulations requires prospective voters to present identification in order to vote. On Election Day, San Juana Segovia, Martha Esther Garcia, Carmen Barajas and Abel Rodriguez did not provide any of the forms of identification described in Section 20355 (c). San Juana Segovia, Carmen Barajas and Abel Rodriguez were recognized by the observers for the Employer and the Union. The Union observer recognized Maria Esther Garcia by sight. The Employer observer did not recognize her by sight but recognized the name Maria Esther Garcia. These 4 prospective voters were challenged by Board agents because they did not present identification.

During the challenged ballot investigation, the Regional Director attempted to obtain evidence that would show whether or not the person who came to vote was the same person who worked during the eligibility period. During said investigation, a Board agent spoke to San Juana Segovia and Maria Esther Garcia and asked them to provide certain information

concerning their identification. Neither person provided any information. During said investigation, a Board agent made several attempts to contact Carmen Barajas and Abel Rodriguez by phone at the phone number they provided in their challenged ballot declaration. They were not in when the Board agent called, and the Board agent left messages with a person who knew Carmen Barajas and Abel Rodriguez. The message was for them to call the Board agent. Neither person contacted the Board agent. Consequently, none of the forms of identification described in Section 20355 (c) have been provided in order to establish the eligibility of San Juana Segovia, Maria Esther Garcia, Carmen Barajas and Abel Rodriguez to vote in the April 5, 2002 election.

Respectfully submitted by,

Dated 7-9-02

Kerry M. Donnell
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